LEGISLATIVE COUNCIL

Thursday 28 November 1991

The PRESIDENT (Hon. G.L. Bruce) took the Chair at 11 a.m. and read prayers.

SOUTH AUSTRALIAN HEALTH COMMISSION (PRIVATE HOSPITAL BEDS) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 26 November. Page 2293.)

The Hon. R.J. RITSON: The Opposition supports this Bill and will expedite its passage through all stages without delay. However, in speaking to this matter, I will talk briefly about the history of the Bill, perhaps from a point of view not discernible in the Minister's second reading explanation, and express just a few misgivings about the whole manner in which private hospitals have been regulated.

The introduction of the Health Commission Act amendment in 1984, which resulted in the rationing of the Bill, was very much a 'get rid of Geoff Ward' Bill. Dr Ward is a prominent radiotherapist and at that time Government hospitals introduced a very draconian service charge for doctors who used high technology equipment to treat private patients. In fact, it was so draconian that it was possible for doctors to lease or purchase their own equipment and treat their private patients at a much lower overhead.

That Bill was introduced by Dr Cornwall, on his own admission, as a matter of some urgency on the eve of Easter 1984, with very little time for the full consideration of this Council. However, as I recall it, he intimated that the purpose of the Bill was to control the quality of service in private hospitals rather than to ration. Here we find this Bill coming to the Council on the last day of Parliament this year, again allowing very little time for its full consideration.

As members generally know, with the introduction of these measures, rationing followed very quickly upon the proclamation of the Bill. The Health Commission immediately took the attitude that no further increase would be permitted in the number of hospital beds in the private sector. Although the Act says nothing about licences for hospital beds—it is simply licences for hospitals—a trade in hospital beds developed, I suppose a little like the trade in prawn and abalone licences. It is trading in a nebulous commodity, relying on the fact that, as a matter of administrative policy, the Health Commission had decided not to allow any expansion in bed numbers. Currently in South Australia very few of the private sector hospital beds are owned by family companies. The majority of private hospitals are owned by churches, charities and entrepreneurial financial institutions such as the SGIC.

The unofficial trade in this nebulous, non-existent concept of a bed licence became quite expensive. If a person or a body corporate wished to expand a facility, or to open up a new hospital, the Health Commission indicated that this new facility would be licensed if the person desiring the licence could massage another hospital with sufficient money to enable it to reduce its bed numbers or to sell out. The going price has reached about $50 000 a bed, although it is not at all clear that if there was a major sell-off of a private hospital in this climate the licences would fetch any such figure. In fact, the asset value of the nebulous, notional bed licence of the past is quite difficult to determine.

As a result of an application for a licence for a new private facility at Gawler, the Health Commission, as usual, granted provisional approval subject to the condition that overall bed numbers remain the same. The person wishing to open this facility did something unusual. Instead of going to another hospital with millions of dollars in a brown paper bag, this organisation read the Act and took the Health Commission to court.

In August Mr Justice Millhouse found in favour of the litigant, and this called into question the whole trade in the so-called bed licences. This Bill actually creates the bed licences. I cannot find anybody who opposes this Bill. The private sector hospital that opposed it in 1984 now supports it, because it is the in-group. This Bill tightens the loophole and keeps the in-group in, and the out-group out.

Indeed, the Gawler interest which successfully challenged the Minister's control now supports the Bill, because it is now in the in-group and merely expresses a concern that perhaps it is not tight enough and that there may still be a little loophole that might let somebody in. So, it is a mass of vested interests but, given the lack of time remaining for examining the principles and the philosophies behind public control of the private sector, I think it would be irresponsible of the Liberal Party to attempt hastily to overturn such a complex system, and perhaps with unforeseen results.

One of the Government's concerns, which is not quite clear in the second reading explanation, is that it is absolutely terrified that any accidental or sudden deregulation of the system will devalue the notional asset value of a bed licence. This means that SGIC would have to write off yet more millions of dollars because of its considerable private bed holdings.

It is hard to see the future but, in the event of a Hewson Liberal Government, which is increasingly looking like a near certainty, it is likely that there will be significant encouragement of private health insurance and that there will be a shift from public to private hospitals, which of course will be a blessing for the disadvantaged people who have had to wait so long on the public list because of the overcrowding in the public sector. Those very people whom the Labor Party purports to care for will have better access to public facilities when the Hewson Government, with a stick and a carrot, encourages the rich people to get out of the public system and leave it to the needy.

In that event, one does not know what will happen to the markets for these beds. Because of the uncertain future of the market for bed licences, I think it is too early for us in this place to determine the future policy of a Liberal State Government in this matter. As I said, the Liberal Party is presently prepared to let the matter remain the same by prospectively removing the effect of the Millhouse judgment. Members on this side of the Council are happy to facilitate the passage of the Bill through its remaining stages without delay.

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

STATUTES AMENDMENT (STATE HERITAGE CONSERVATION ORDERS) BILL

Adjourned debate on second reading.
(Continued from 27 November. Page 2375.)

The Hon. DIANA LAIDLAW: The Liberal Party supports the second reading of this Bill, but only to provide the opportunity for amendments to be moved in the Committee stage. The Bill itself seeks to enable the Minister to

interim list a heritage item and to place a conservation order on it after the planning application is lodged. The Bill also proposes amendments to the South Australian Heritage Act to provide that, where a valid planning approval is in existence, it cannot be over-ridden by a conservation order.

As I indicated, the Liberal Party will be moving a number of amendments. We maintain that these amendments are critical in order to re-establish a sense of balance to the heritage and development debate in this State, to reinforce the integrity of the law in this State, to redress the unfair features of the current planning law in respect of appeal rights and to remove retrospective elements of this Bill.

At any time it is unusual in any democratically elected Parliament to debate legislation which is retrospective in its impact. It is an extreme measure used only in extreme cases. On the rare occasions when retrospective legislation is introduced, it should be done with great caution, with time provided for all members to consult fully, and to consider the ramifications before voting.

In the past year, as all members would know, this time-honoured practice has been overturned. We have had to endure an extraordinary spree of retrospective legislation and, of course, each time this has been rushed through with very limited time for consideration and debate. It is very interesting to note that on each occasion this spree of retrospective legislation has been in the name of the Minister for Environment and Planning. I am not sure if the Minister is seeking a place in the *Guinness Book of Records*, but she has certainly earned it. Of one thing I am certain—the spate of retrospective legislation in the past year is a damning indictment on the Minister for Environment and Planning and her capacity and integrity as an administrator.

I see that members opposite are smiling; I do not think this is a smiling matter. I believe that they have a duty; they are entrusted by the electors of this State to uphold the status, integrity and credibility of this place and also the integrity and credibility of the law. What we see with the spate of retrospective legislation introduced by the Minister for Environment and Planning is that we are undermining the respect for the law in this State and certainly degrading the Parliament in the eyes of the community. If members opposite had any concern at all about the low image in which members of Parliament are held in this community, they would look at the contribution that retrospective legislation is making to our low image in the community. At any time the Minister for Environment and Planning can be replaced, and I know that more and more people who hold property and who are keen to develop that property within the ambit of the law would argue that the sooner she is replaced the better.

However, it is not so with the Parliament. As members we are entrusted to uphold the status of this place as a credible institution deserving wide community respect, and I do not believe that is a matter which members opposite in general, but in particular the Minister for Environment and Planning, have any understanding about, especially with regard to her responsibility to uphold those matters, let alone her role in understanding those matters.

I am one member in this place who can speak consistently on the matter of retrospectivity, although I respect that, with any matter of principle such as retrospectivity, those principles must be used as a guide only and each case must be judged on its merits. Members will recall that late last year this Government sought to pre-empt a decision by the High Court of this country to introduce regulations retrospectively to validate its planning approval for the development of a resort at Wilpena within a national park. I was opposed to that measure. I was also opposed to legislation debated in this place last week retrospectively to validate the water rating system. On behalf of the Liberal Party today I again oppose the retrospective elements of this Bill which would allow the Government to ignore a Supreme Court judgment that a local government authority must have regard for the law at the time the planning application is made.

At one time the Democrat members in this place prided themselves on their role to keep the bastards honest. Certainly, they have made no effort over the past year to keep this Government honest in terms of retrospective legislation. They have endorsed each one of these three measures and, from public statements, we understand that again they will endorse this Bill. I would argue most strenuously that, in doing so, the Australian Democrats are endorsing shoddy administrative practices and bad government, and that is not the way to keep the bastards honest.

Before I address the specifics of this Bill I want to address the heritage development debate that has been raging—and for good reason—for quite a number of years in this city in particular and to place on record yet again my strong support as a legislator and as a resident of North Adelaide and the City of Adelaide for heritage listing, for the new townscape concept and for incentives for property owners to restore and maintain heritage listed buildings. Heritage is a key to the quality of life on which we pride ourselves in our city. In my view it is certainly the key to a sense of well being as South Australians. Heritage is increasingly being used as the backbone of our tourism industry and the promotions associated with it which, for good reason, the Government has identified as one of the five key strategic areas of economic growth for this State. I know that next week there is to be a launch of the cultural tourism policy and initiatives. Cultural tourism as a concept is extremely important to this State, possibly even more so than to other States in Australia, because in tourism terms we do not have what many people regard as significant attractions to bring people here in the first place so that later they can enjoy the other quality of life features that we offer in this city.

So, this feeling of ambience, of quality of life, of friendliness and our strength and pride in our culture are critically important. It is therefore vital that this Government and the Adelaide City Council in particular get their act together on this question of heritage and the listing of properties. It is a damning indictment of both the Government and the Adelaide City Council that these unsavoury debates, public slanging matches and the strength of feeling continue to occur on a weekly basis as we go from one development to another, that is deemed by people to have heritage significance. I suppose it is very much like the debate on the cultural boulevard along North Terrace. For years the Government has been talking about the value of such an initiative, but for years it has done nothing—absolutely nothing—to promote North Terrace and develop it as a cultural boulevard.

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: The Minister of Tourism interjects and says, 'Quite rightly.' She has had a bad week, and for good reason she might be a bit upset about some of the comments I am making today. But why should tourists come to this State to see a so-called international cultural boulevard when our museum is not even air-conditioned, when the Government has deferred extensions to the Art Gallery and when there have been urgent locational problems at the State Library—

Members interjecting:

The PRESIDENT: Order! The Council will come to order. The Hon. Ms Laidlaw.

The Hon. DIANA LAIDLAW: —for many years. Certainly, if the Government believed what is said about a cultural boulevard along North Terrace, it would have got its act together with the Adelaide City Council to resolve these heritage issues. Its record in this regard is absolutely appalling. In terms of the city as a whole it has not even seen fit to put up signs or plaques on buildings that are heritage listed to highlight to tourists or to inform local people of the importance of these heritage buildings so that people can be educated about the value of retaining these buildings and the history that is associated with them. This Government talks about such things as the MFP and a world university but it cannot even get itself organised in terms of the heritage listing of our existing buildings. In fact, it could not even set up a trestle table outside Tourism South Australia earlier this week to help tourists in this State, so perhaps we should not necessarily be surprised—

Members interjecting:

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

The Hon. DIANA LAIDLAW: The Minister of Tourism has not had enough sleep.

Members interjecting:

The PRESIDENT: Order! The Council will come to order. Everyone will have the opportunity to enter into the debate, and the cross exchange between members will cease.

The Hon. DIANA LAIDLAW: Thank you for calling the Council to order, Mr President, because certainly the Minister of Tourism is hysterical. As I said before, she has had a bad week and has been justifiably criticised. The Government has reason to be very sensitive on this subject because its rhetoric has just not been matched by action. Certainly, there has not been a resolve to sort out these problems of heritage and development which, in many instances, are demeaning the heritage debate in this State. At the same time we have a case where we could lose a great deal of our important heritage, both in social and architectural terms, because of the tardiness of the Government in this regard.

I also want to speak briefly to an article in the *Advertiser* yesterday that highlighted a concern of many owners of heritage buildings. It is my view that they are fortunate to have such a listing and to own such a property, but it is quite apparent that in the real world it is seen as a handicap to them to own such property. The article highlighted Opal Fields House and the owner of that building stated yesterday that this property in King William Street had plunged in value by $300 000 since it had been heritage listed. Other buildings are quoted as suffering the same devaluation in dollar terms.

Councillor Henry Ninio is cited as claiming that he is keen to see compensation provided to owners of heritage buildings to take account of this devaluation in property valuations. I have grave concerns about moving into compensation in this field. It does acknowledge that heritage listing is not regarded as a matter of some pride to the owner of the building and it would undermine the benefit that these buildings provide to our community.

However, I am strongly in favour of providing incentives to owners of heritage buildings to conserve and maintain those buildings, and that has been a view that I have held for many years, well before I became a member of this place. I have campaigned through the Liberal Party, and I will continue to campaign, for the introduction at the Federal level of tax incentives for restoration work on heritage listed buildings. At one stage during Andrew Peacock's period as Leader of the Party, tax deductions for such work were included in the Liberal Party policy, and I applauded that at the time and I know it was well received by heritage building owners. It also represented a recognition that a Federal Government should provide some encouragement to the owners of such buildings that are being heritage listed for the benefit of the community. I believe benefits should be provided to the owners of such buildings. Initiatives have also been talked about *ad nauseam* in this State to provide assistance and incentive to owners of heritage buildings, and this has been so at heritage and National Trust planning meetings that I have attended over the years.

One can almost predict what the script will be at most of those meetings today, because they are still pleading for the introduction of the same incentives for which they have been calling for about 10 years. These include relief in terms of land taxes and water rates. These are matters that this Government could and certainly should have addressed positively a long time ago. I suppose we could not necessarily have expected the Government to take that action because it cannot even get its act together in terms of working out which buildings should or should not be on the list and it cannot even put the resources in to help the Heritage Branch and the heritage committee speed up their work in this regard. Speeding up that work is absolutely critical, not just at this time: it has been needed for many years.

Initiatives are also possible at local council level, including rate holiday initiatives. I know that the Government has undertaken to review the Heritage Act and the Planning Act in this State. However, it is taking a long time to review these important matters and that is an issue in itself, but there is no doubt that a review of our legislation in this area is vitally necessary. Currently it is complex and messy and not even I, who take an interest in this subject, realised how complex and messy it was until I received a most elaborate two-page diagram of Heritage Act procedures. They are very involved, and unnecessarily involved.

The pity of this Bill is that it complicates the procedure further and adds a great deal of confusion to interim listing and conservation orders. I am not too sure what can be achieved and what I cannot determine is the reason for both matters, because the powers and procedures relating to both often overlap. As I say, in my view they are not helping to develop an understanding of this complicated but important area, and certainly the complicated legislation is not helping to enlist the support of owners of buildings to purchase a heritage listed building, let alone actively seek a building to be heritage listed.

This Bill is essentially about the Gawler Chambers building on North Terrace, and it is that building to which I wish to refer at this stage. The building has generated considerable debate about its outward appearance. The red brick, turreted building is seen by many as ugly and by others to have virtues. In my view, it is certainly seen as important in terms of the streetscape of North Terrace. I am of the belief—and have been for some time—that the streetscape between North Terrace (including the Westpac Building) and Gawler Place and a little beyond is very important to the appearance of North Terrace as a cultural boulevard and in maintaining the overall heritage feel of the city of Adelaide. The North Terrace/King William Street corner is very important in our city, and it has long been my view that the buildings from North Terrace to Gawler Place should, at the very least, be heritage listed individually and as a streetscape.

However, that has not been the view of the Adelaide City Council, the State Heritage Commission or the Minister herself, and in the context of this debate it is very important

to note that, on three occasions in the past decade, Gawler Chambers has been rejected for heritage listing. Those occasions were 1982, 1985 and 1987. The Minister herself rejected interim listing only a year ago. So it was of some interest to me to see that, after campaigns by some, for at least the past decade, to heritage list this building, the Minister finally saw reason to do so on 4 November this year. But, in the meantime—and this is the most important aspect in respect of this Bill—we have seen a sick and sorry saga of maladministration by the Minister on behalf of the Government.

I think it is important to go over these matters in respect of the experiences of the owner of this building, the Adelaide Development Company, which was successful in a Supreme Court action in respect of the building. The Supreme Court held that, because the Adelaide Development Company's application was lodged before the Government heritage listed Gawler Chambers, the listing could not be taken into account in deciding whether to give consent to the proposal to build an All Suites Hotel on the site.

The Minister argued in her second reading speech that it has been generally accepted that a heritage listing and conservation order could be taken into account after a planning application had been lodged. Certainly, in 1985 the Liberal Party strongly supported the issue of conservation orders when that matter was debated in this place. It is certainly debatable whether it was generally accepted that such orders could be taken into account after a planning application had been lodged, and my re-reading of the Act at that time does not suggest that it was generally accepted by members in this place that that would be so. Nevertheless, whether we in this place thought it was so, the court has ruled that that is not the case.

If passed, the Bill would mean that the Adelaide Development Company's application would be subject to a heritage listing made after its planning application had been lodged and, in considering the company's planning appeal, the tribunal would have to take into account the heritage listing. So, even if the Adelaide Development Company won the planning appeal, because of the conservation order that was made before it received planning consent, it would not be able to implement such consent. I believe that that is unacceptable, and so do my colleagues.

As I indicated earlier, Gawler Chambers has been rejected for heritage listing on three previous occasions before 4 November this year. The Adelaide City Council asked the Minister for Environment and Planning to put Gawler Chambers on the Heritage List before the Adelaide Development Company lodged its application and, as I say, the company was aware that the building had been rejected time and again in terms of heritage listing. However, the Minister did not act on that request before the application was lodged in December 1990, and in a few days time it will be December 1991. So, for the company this has been a long, drawn out saga. It has had planning laws on its side all the way through but the Government has now sought to change the rules to suit its own ends—not only that, but to make up for its past failures to act on this matter.

In the interim, the Adelaide Development Company went to the Supreme Court to convince the Government and the council that the Government's interpretation of the Heritage Act was wrong. As we all know, the Supreme Court agreed with that view. The Adelaide Development Company then commenced the Supreme Court proceedings against the Adelaide City Council and the Minister for Environment and Planning. I believe it should be of interest to members opposite to realise that, before the hearing of the Supreme Court proceedings, the Minister herself withdrew from that hearing. She also agreed to pay the Adelaide Development Company's legal costs and to accept the court's decision. Of course, she agreed to accept that decision until the introduction of this Bill, which seeks to overturn the existing rights of the property owner, which the court upheld.

That is part of the background to the introduction of this Bill. As I indicated earlier, it is a sick and sorry saga that has not assisted the heritage development debate in this city and has certainly undermined the heritage issues in Adelaide. Again, it certainly has not reflected well on the competence of the Minister for Environment and Planning. I appreciate the very strong support received for this Bill from a number of bodies and organisations, and, as a member of the National Trust, I acknowledge that it supports this legislation.

I feel rather sorry for the National Trust because it is genuinely seeking to ensure that the heritage of our city is listed as quickly as possible and protected for present and future generations. Its task in winning community support for that argument is repeatedly undermined by the inaction of this Government and its move from time to time to introduce retrospective legislation which does not help to win the community support which is so necessary for the heritage listing of these buildings.

I go back to the issue of Borthwick and the buildings on Palmer Place. We need to encourage the owners of those buildings to believe that the buildings are of great importance to the community. That building should have heritage status. It should also have incentives associated with that status to encourage the owner to maintain the building and not allow it to fall into the disgraceful state that Mr Borthwick allowed his two buildings on Palmer Place to fall into, to the degree that the council was forced to buy those buildings, which it has subsequently sold. All those events do not help the National Trust in its campaign—

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: The Adelaide City Council purchased those buildings in an effort to retain them for the benefit of our community, because neither the State Government nor the Federal Government, nor, indeed, the Adelaide City Council, has come up with the initiatives and incentives that are so urgently required to encourage the maintenance of those buildings and to encourage people to support the National Trust campaign to have more buildings heritage listed.

I should like to note one further dilemma that I have had in relation to this Bill, notwithstanding my strong views about the appalling way in which the Government has acted, or not acted, in this matter and my strong views about retrospective legislation. It could be argued that amendments that the Liberal Party will be moving to delete the application of this Bill to the Gawler Chambers building are retrospective, because the Minister has finally heritage listed this building. I understand that argument. However, the Government has had little respect for the value of heritage listed buildings in the past. It has not been fussed about whether it demolished a heritage listed building when it was a Government-owned building. I cite the debate that we had in this place in March 1984 when I moved motions condemning the Government for the demolition of the Yatala Labour Prison. That was an appalling example, which members may recall, of the Government, first, allowing its own building to fall into disrepair and, secondly, pulling—

The Hon. Anne Levy: It got burnt.

The Hon. DIANA LAIDLAW: It got burnt, but it was in appalling disrepair before that time, and you know that quite well. There were riots and a whole lot of other problems because the building was not properly maintained. The building was burnt and there were various studies about its

restoration. The Minister will know that part of the former Governor's house at Marble Hill has been restored. Much of it remains a shell after a fire, but we have still seen fit to keep that shell and we still promote that building as a heritage item and for tourism purposes. However, the Government did not see fit to consider restoring Yatala A Division. There would have been enormous costs involved in such an exercise, but the Government did not even see fit to keep the shell of that building.

The Government's record on demolishing its own heritage listed property is not good. Any comment that the Government may make about our move to delete the application of this Bill to the Gawler Chambers site, which may lead to the demolition of that building, would hardly be credible in such an argument, not only because of the earlier demolition of the Yatala Labour Prison, but also because of its consistent refusal over the last decade to heritage list this building, until there was a knee-jerk reaction within the past three weeks to do so.

The Liberal Party will be moving a number of amendments during the Committee stage. One relates to appeal rights. We believe that many people in the community, on the side of heritage and on the side of development, are at one in agreeing that the issue of the appeal processes must be addressed. I know that is the very strong view of the National Trust. As I said, we will be moving amendments in that regard.

In 1985 the Liberal Party supported the issue of conservation orders. We remain of that view. However, we deplore the manner in which the Government has demeaned the heritage debate in this State. The Minister in particular has demeaned heritage listing of properties by the manner in which she has handled, or not handled, the heritage listing of the Gawler Chambers building over the past year. Now, because of her shocking administrative practices and oversights, she seeks to bring in a Bill that asks us retrospectively to remove the rights of a property owner. In my view, that will undermine the great efforts of people in this State to have buildings heritage listed and to encourage the owners of those buildings to maintain and conserve them.

The Hon. Anne Levy: You want to knock down Gawler Chambers.

The Hon. DIANA LAIDLAW: Just as you knocked down—

The Hon. Anne Levy interjecting:

The Hon. DIANA LAIDLAW: You were quite happy to do that until 4 November. You are such a hypocrite.

The PRESIDENT: Order! The Hon. Mr Davis.

The Hon. L.H. DAVIS: The Minister for Arts and Cultural Heritage has unwisely introduced, in a not too subtle interjection across the Chamber, the Liberal Party view on Gawler Chambers. She totally ignores the fact that the Labor Government some years ago actually removed Yatala A Division from the Heritage List so that it could knock that building down. That is the standard that we have from the Bannon Government; that is the care it has about the built heritage of this State.

The Hon. Anne Levy interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: As far as I am concerned, the Ministers of the Bannon Government should have served time, in the literal sense, for the disgraceful action that they took, not only in relation to Yatala A Division, but also in relation to the Grange vineyard, the most precious of areas, the birthplace, quite literally, of the wine industry in South Australia, where more than half of South Australia's wine was kept in the late nineteenth century.

Just seven kilometres away from Adelaide there was the opportunity to have a national wine museum with an international reputation, and the Bannon Government turned its back on that. Very little has changed since that time. We in the Liberal Party have been forced to become the unwilling whipping boys—if one can use such a sexist term—for the inaction and inadequacies of this Government in respect of heritage matters.

The fact is that the Heritage Act was introduced by a Labor Government in 1978—13 years ago. I am not too ashamed to admit publicly that at the time the legislation was a leader. In fact, it was mirrored in other States; South Australia was seen to be leading the way in its concern about its built heritage. We had too many examples of the fine built heritage of Adelaide, in particular, falling victim to demolition. The South Australian Hotel, which was just across the road from Parliament House, is an excellent example, along with Edmund Wright House, which was saved not by a Government or the National Trust, but by the people of South Australia—the little people who, by their action, forced the Government of the day under the Premiership of Don Dunstan to recognise the merits of the argument. Perhaps that was the turning point for the heritage debate—

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: —in South Australia.

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: The Bill before us—

Members interjecting:

The PRESIDENT: Order! Two members will come to order. The Hon. Mr Davis.

The Hon. L.H. DAVIS: This Bill has two strands. First, there is the strand effectively dealing with the problem of Gawler Chambers. The second strand is of a more general nature. The Hon. Diana Laidlaw, as the lead speaker for the Liberal Party, has already indicated broad support for the general principles enunciated in the legislation. However, in the particular matter of Gawler Chambers, let there be no doubt about the Liberal Party's position. The fact is that Gawler Chambers has been considered for listing on three previous occasions and has been rejected on two occasions by the City of Adelaide for inclusion on the Lord Mayor's heritage list and on one occasion for State heritage listing.

In fact, in August last year the Minister declined to place the building on the interim list and, to put that in plain language—language that even the Minister for the Arts and Cultural Heritage can understand—the Minister was saying then that she did not believe the building was of enough significance to warrant its being on the list. That was the bottom line of what the Minister was saying. The Minister had the opportunity under the Government's legislation to put it on the interim list, but she declined. She said 'No.' The Adelaide City Council also said 'No' on two occasions. What happened after that? Of course, Gawler Chambers, which is the subject of a hotel redevelopment, has become a matter not only of public controversy but also of legal dispute.

I will run through the processes involved in such a case. In 1985, with Liberal Party support, the South Australian Heritage Act was amended to give the Minister for Environment and Planing responsibility for administering the Act and the power to place conservation orders on buildings or structures which were deemed to have significant heritage qualities but which were under threat from alteration, destruction and damage. Such an order was to operate for

only 60 days with the ability, subject to approval from the Planning Appeal Tribunal, for it to be extended to a period of up to six months. That time enabled an assessment of the heritage significance of that building or structure to be undertaken.

Over the past 12 months, six conservation orders have been made following lodgment of planning applications, and in four of those cases the order was placed as a result of requests from local council. Earlier this year, a court challenge was made regarding the Minister's power to make a conservation order on a building after a planning application had been lodged for its development. Of course, this is the Gawler Chambers case. After the development application was lodged with the Adelaide City Council, the Minister had second throughts. Of course, this Government not only has second thoughts: it also has third thoughts, fourth thoughts and U-turns, and on some occasions it just sits on its hands.

The Hon. Anne Levy interjecting:

The Hon. L.H. DAVIS: The Minister for doing nothing over there is unwisely entering this debate because her record in relation to North Terrace—the kilometre of culture; Adelaide's pre-eminent cultural boulevard—is nothing short of disgraceful. The deferment of the Art Gallery redevelopment, the problems with the museum—

The Hon. Anne Levy: That is not a heritage issue. It has nothing to do with heritage.

The Hon. L.H. DAVIS: But it is a useful aside, Minister, and I just want to make the point publicly again. I find it remarkable that someone with such a poor record—in fact, no record at all—is entering this debate. When the development application had been lodged with the Adelaide City Council, the Minister decided to place Gawler Chambers on the interim list, having said last year that she did not want to have it so listed. What happened to the Minister on the way down North Terrace? Was it a blinding flash? Was she being driven by some new historic discovery or perhaps a new perspective of the architecture of the building or the history of the building? Surely it was just political opportunism. That is the sort of tag that we can so easily attach to this lazy, limp, lack-lustre Government.

The Minister, having issued a conservation order on Gawler Chambers, was protecting this building from destruction. The argument was that it was an important part of the State's heritage. As far as I am aware, that argument was not elaborated on in public. I understand that it may relate to the fact that the South Australian Company had built the building in 1912 and that at some stage it had housed the South Australian Company, which, of course, was founded by George Fyfe Angas. The South Australian Company was inexorably bound up with the initial settlement of the then colony of South Australia.

So, there was an historic reason, and I respect the argument that the National Trust has advanced in relation to that point. However, architecturally, let there be no doubt, first, about the interior of the building. Having enjoyed many uncomfortable moments in a dentist's chair in that building over many years, I think it could perhaps be argued that I have a bias against it. However, the interior of the building is totally impractical. I think it would be very difficult to refurbish it on a commercial basis.

The Hon. Anne Levy: There are three chiropodists in that building.

The Hon. L.H. DAVIS: Three chiropodists—I think that the Bannon Government has been there, because certainly most of its toes have been cut off in recent weeks. The other point that I accept is meritorious in considering the heritage significance of this building is that it is a Federation building, and that is unusual in Adelaide. I suspect that it is much more common in some other capital cities. It is a building (and one has to be ultimately subjective about this point) which does not have enormous appeal, but certainly it forms part of a streetscape. I think that is one area where the Government has been found wanting: it has not appreciated the importance of streetscapes until quite recently.

In that respect, South Australia is light years behind many other countries. I can instance Canada and North America, in particular, where the main street program flourishes so strongly in both big and small cities and towns. The main street program has as its nub the idea of preserving the streetscape in its entirety, where appropriate, with suitable use of colour, signage, and the historic background of that street. There are many cases in South Australia where main street programs could have operated over the past decade. In fact, I think that approximately 12 or 13 years ago I was arguably the first person in the State to talk publicly about main street programs when I argued in the National Trust that the trust should be picking up the main street program that had been adopted so successfully overseas. Indeed, the National Trust has—

The Hon. Anne Levy: Where do you want them? In Hahndorf it is too late; Burra, yes.

The Hon. L.H. DAVIS: No. The National Trust has been very professional in pursuing that, but the Minister interjects, again I think unwisely, and asks where we want them. Burra is a very good example, and it is moving in that direction. Strathalbyn is another good example, and again it is moving in that direction. Penola, which may well become the home of a Saint in the not too distant future, is another example. There are many examples where this could occur. However, this Government's limp and lifeless approach to heritage is again typified in this kneejerk reaction to the Gawler Chambers debate.

Let us put the streetscape in North Terrace in perspective. On the northern side we have the wonderful cultural boulevard (which is so neglected by the Minister for the Arts and Cultural Heritage), the Art Gallery, the Library, the Museum, the University of Adelaide with its magnificent Mitchell Building—

The Hon. Anne Levy: They are not neglected in a heritage sense. Why do you think—

The PRESIDENT: Order!

The Hon. L.H. DAVIS: —the University of South Australia, the Royal Adelaide Hospital, the Botanic Gardens, Ayers House on the south, and many elegant buildings, including the Freemasons Hall and some very attractive buildings to the east of that hall, one of which is still a domestic residence. Of course, on the western side of North Terrace, we have Government House, Parliament House, the magnificent Old Parliament House building—

The Hon. Anne Levy: The western side of North Terrace?

The Hon. L.H. DAVIS: I am sorry, on the western side of North Terrace.

The Hon. Anne Levy: Government House is still east of King William Street.

The Hon. L.H. DAVIS: All right. I am just talking about running west from the buildings I mentioned before. Talking of the buildings west of the buildings I have already mentioned, for the benefit of the pedant opposite, I repeat that there is Government House, Parliament House, Old Parliament House and the Railway Station building. That is a fine collection of buildings, and it is unusual in any capital city to have a collection of cultural—

The Hon. Anne Levy: Don't forget the Lion.

The Hon. L.H. DAVIS: Indeed, the Lion building which at long last will be the site of the Living Arts Centre.

The Hon. Anne Levy: The Lion Arts Centre.

The Hon. L.H. DAVIS: Yes. I am not sure how you spell that.

The Hon. Anne Levy: L-i-o-n.

The PRESIDENT: Order! The Hon. Mr Davis will address the Chair and the Minister will cease interjecting.

The Hon. L.H. DAVIS: Thank you for your protection, Mr President; it is deeply appreciated. I would argue that it is unusual to have such a fine collection of cultural buildings in such a small geographic area. One can accept that, at first sight, there is an argument to look very carefully at the streetscape in North Terrace to ensure that the cultural fabric is not damaged. One could look at the delightful buildings that existed prior to the erection of the John Martin's car park. That, of course, was a great sadness, and it could be argued that that should never have occurred. I think these days it would not happen.

One can also admire the refurbishment of the buildings in North Terrace immediately to the east of King William Street on the southern side—part of the Remm project—where the streetscape has been preserved in its entirety. I refer to the old Liberal Club building at 175 North Terrace, the old Goldsborough Mort building, Shell House and so on. I refer to that block between James Place and the Adelaide Club.

The Hon. Anne Levy: And Gawler Chambers.

The Hon. L.H. DAVIS: No, it is not.

The PRESIDENT: The honourable member would do better addressing the Chair.

The Hon. L.H. DAVIS: That streetscape has been well preserved but, when one looks at the next block between Gawler Place and James Place, we have the Queen Adelaide Club and Gawler Chambers—I think just two buildings.

The Hon. Anne Levy: Gawler Chambers is—

The Hon. L.H. DAVIS: No, that is it. One can look at the height of the buildings, the architectural style and the material used in those buildings and make a judgment that it is pleasant but not as riveting as the buildings to which I have just referred between James Place and King William Street.

The Hon. Anne Levy interjecting:

The Hon. L.H. DAVIS: That is on the other side. I have examined the proposal for the hotel on that site. It is an all-suites hotel, which means that it will not involve a large number of people. It is not as if it is a 200-bed hotel, which could, of course, create some parking pressures in that area. It is also of a scale and of a design which I think is very pleasant. It is appropriate to say that, in recent times, very sadly, pleasant designs and models have been paraded in public to give the impression that a nice new building will be erected.

I can instance the Hyatt Hotel. One can now go into the foyer of the Casino and look at the original model paraded for the Hyatt Hotel and find that the lift wells are now of a different colour from those that are on the model and on the scale drawing. Indeed, the Hyatt Hotel structure is quite different in the sense that there are water towers of an indescribable ugliness on the top of that hotel that simply never appeared in the original design. I find that quite unacceptable.

I also understand that major variations were made to the original plan submitted for the State Bank building that altered its design. However, I must say that building is much more appealing to the eye than is the Hyatt Hotel. I want to make the point that it is important that the Government and the Adelaide City Council have a mechanism to ensure that people cannot submit one plan and then build from another. There have been instances of that to the point where the Hyatt Hotel is so ugly on the skyline that, from what I can see, national business magazines carrying an advertisement for the Hyatt actually airbrush out the ugliness in the illustrations of that hotel. Having said that, I want to make sure that people understand that I have nothing but the highest regard for the quality of management and service in that hotel.

Therefore, my argument is that the Adelaide Development Company has been the victim of a Government that has not done what it could have done under legislation and that the Minister placed Gawler Chambers on the interim heritage list only after the development application had been lodged with the Adelaide City Council. The Adelaide Development Company took Supreme Court action to have the council consider the application without consideration of the heritage listing or the conservation order. The court upheld the Adelaide Development Company's challenge and ruled that the law at the time the application was made was the law that the council had to abide by. So, it considered that the interim listing and conservation order introduced new law, and the council had to ignore them in deciding the application.

So, the Government has taken action to redress that situation, but the situation quite clearly was of its own making. We cannot abide a Government that has had an opportunity over a 13-year period to look at the most valuable cultural precinct we have in Adelaide and, having muffed its chance, then seeking to adjust the situation retrospectively. That is simply bad law, in my view. So, that is the particular matter of Gawler Chambers. However, in the more general matter I accept that the Minister should be given power to place a heritage item on the interim list and to ensure that where a valid planning approval is in existence it cannot be overridden by a conservation order.

The other point that is central to this Bill is that there is obviously a need for an appeal mechanism to be provided at a time when a conservation order is placed on a building or when a building is placed on the interim or full list of the register of State heritage items. No mechanism exists at present, and of course the Bill remedies that situation.

Although it is difficult for many people because heritage is quite often in the eye of the beholder, the Liberal Party's position on this matter is equitable; it recognises the law as it stands and also recognises the defects of the existing legislation and seeks to remedy them.

The Hon. M.J. ELLIOTT: The Democrats support the second reading. In any debate over heritage there are two significant positions or issues. There is a widely accepted need for society to preserve its built heritage through protecting buildings and precincts. Some hold the view that that need is paramount over all concerns as, once the buildings are gone, they can never be replaced. The accepted perception of heritage has been changing recently. It is no longer an intellectual exercise involving the particular architectural merits of one building over another, but it is becoming more community oriented and indeed more emotional. The fact that the heritage issue is becoming a community issue rather than an intellectual issue is a good thing. What is causing the great difficulties that we now have is that the changes in this area are still relatively recent and also very rapid. Only about 20 years ago the South Australian Hotel across the road from here was knocked over and, whilst there was a great deal of concern, that sort of action was accepted, but I think progressively there has been a change so that people are becoming increasingly concerned about particular buildings.

So, there has been a push for heritage listings of individual buildings and I think that, as I have already said, architectural merit has not necessarily been the sole important issue. It is even more so, now that people are looking at the issues of streetscape. Whilst any one building in itself may not be considered by individuals or architects to be of heritage value, many people would now judge it together with a collection of other buildings. It is collectively that there is a value that the community wishes to preserve. This change is rapid and is still occurring, and we have the council and the Government grappling with increasing demands for preservation of buildings which only a few years ago were not considered worthy of preservation but which the community at large is now saying should be preserved. That makes it difficult for the council and for the Government, and I think everybody has to accept that that is where many of our problems are now coming from.

The other side of this coin is the issue of fairness, in relation to when decisions are taken, what buildings need protection, what form that protection should take and when it should be provided. Changing the rules part way through any game is unfair to the players and, in relation to building owners, removing their ability to do with their properties as they wish potentially leaves them with a financial cost. For an individual (and for that we can read 'company') to bear a cost that through the Government society has demanded I believe is unfair. In the case of native vegetation it was seen as appropriate that land owners be compensated, because the community wanted the land protected, and that effectively closed off the potential profits the landowner would have had derived, had he had access to the land and been allowed to develop it and bring it to production. The analogy is very similar.

This issue is something that must be taken into account as part of the review of the Heritage Act that is currently under way, and at the end of the second reading debate or during the Committee stage I will seek answers from the Minister about the review that is currently under way. What I see before us now is very much an interim action and I believe the main game is the Bill that I expect we will be debating next year. I would ask the Minister for an indication that this will occur, that is, that compensation will be taken into account, and also for an indication of when the review is to be completed, when there will be an opportunity for public comment on its outcomes and, finally, when it is expected that a new Bill will come before Parliament.

If when we eventually get it the new Act is properly structured, the development versus anti-development argument can be finished. The sort of debate we are having now is unnecessary except in so far as the current legislation is obviously encouraging it to occur. I do not mean that it is encouraging it in a deliberate sense but quite clearly it is not picking up the issues, particularly the issue of fairness, in a way that allows a developer to say, 'Okay; I can understand that I cannot develop this building but I will not be out of pocket.' I believe there are ways of doing it. I believe there are limited capacities for the transfer of development rights at the moment but clearly they are not working. I see no way that simply out of its pocket the Government can produce the cash for compensation but I do think that variations on transfer of development rights could occur so that additional floors could perhaps be bought and added to a building and those rights may be bought directly or indirectly from people who have lost development rights. If properly structured, those sorts of processes mean that no new money has to be found. At the end of the day the burden is spread across the community and does not land on the unfortunate people who happen to have a property that is heritage listed.

The Hon. Anne Levy interjecting:

The Hon. M.J. ELLIOTT: Yes, across all properties.

The Hon. Anne Levy interjecting:

The Hon. M.J. ELLIOTT: Yes, that is right. Eventually, even if it is all the properties within metropolitan Adelaide or the city mile of Adelaide, or just those areas where development is predominantly occurring, it still spreads across the whole community because the costs are eventually shared. I do not see it as being an overall cost to the community because it is simply an exchange of development rights and there is not a final cost to anyone. That is the way it can be: we can have a win:win situation where the heritage is preserved and people are not left with the burden. It is a matter of getting that compensation package to work properly.

If the Government fails, in the new legislation we will look at next year, to come up with a system that will work. I am afraid we will be left with the same development/anti development debate we have had for years and that is not helping anyone. As I said before, I see this Bill very much as an interim Bill and the main game will be the debate next year, and I am addressing the Bill on that basis.

The first issue in this Bill is retrospectivity, of which there appears to be two aspects. First, there is the requirement that consideration be given to a conservation order placed on a building after an application has been made, although the Act requires that the application be considered in the light of the law as it stood at the time the application was made.

Secondly, there is the fact that the Bill will affect the rights of applicants in relation to applications made before the proclamation of this Bill. The Law Society in a letter to the Minister opposes the second aspect but guardedly supports the first by saying:

> The fact that the merits of heritage listing have not been considered for all buildings, perhaps warrants this aspect of the retrospectivity.

These will be issues that we will explore more in Committee and so I will finish with that aspect now.

The second major issue raised by this Bill is in relation to the amendment to section 24. Two views of this amendment have been presented to me. BOMA and the Adelaide Development Company, which owns Gawler Chambers, are concerned that work approved after a conservation order has been put on a building and under the previous amendments to this Act were taken into account in the processing of the application will still not be able to proceed. This concern arises from the fact that the existing section 24, which would become subsection (1) under this amendment, says that damaging or destroying an item, being an item on the interim list whether or not it is the subject of a conservation order, is an offence. To clarify this, I will read from a letter from Norman Waterhouse, solicitors for Adelaide Development Company:

> The key point to note about the proposed amendment to section 24 is that if a conservation order is put on a building before planning consent is granted for a development affecting a State heritage item, even if the property owner gets planning consent after that time (which by virtue of the proposed amendments to the City of Adelaide Development Control Act and the Planning Act will mean that the planning authority will have taken into account the heritage listing when deciding whether to grant consent) it will still be an offence to carry out the approved development because to do so will involve the damage or destruction of an item which is an offence.

That is rather typically a lawyer's sentence—a very long one. The Law Society points out that heritage listing does not protect a building from redevelopment. Rather, it means

that before anything can be done, its heritage value must be considered when the appropriate consents are sought. I would like the Minister to clarify whether it is the Government's intention to prevent development work on a site, which was approved while a conservation order was in place on that site, given that the order would be taken into account during the approval process.

The contrary view put by ADC and BOMA is a view that was put to me from the Conservation Council, that it is anomalous that work approved prior to a conservation order being placed on a building should be allowed to proceed when the heritage value of the building was not taken into account when the work was approved.

The Conservation Council floats the view that revoking such an approval could give rise to compensation, an issue I have already mentioned. The issue here is where we draw the line between the rights of a developer and the ability of the Minister to preserve heritage. Is it at the point that an application for development is lodged, as ADC has argued and won in court? Or is it never, as I understand the Conservation Council is advocating?

I believe this amendment, by stating that work which has been approved for a site before that site became the subject of a provision of the Act can proceed, draws the line at the time of development approval. By this stage, the planning authority (the council), the Minister and the community would have had ample opportunity while the application was being processed to call for an order to be granted in respect of that site and have that order taken into consideration during the approval process. The rights of a developer who has been successful in this process should not be threatened because the council, the Minister and community missed the boat and failed to grant a conservation order in time.

I have been advised that Gawler Chambers, which was the subject of the court case which led to these amendments, would still be protected because the conservation order was on the building prior to the council's refusal to approve its demolition. I am told that any appeal tribunal decision to approve the demolition would be substituted for the council decision. At the time of the council decision, the conservation order was in place and under the proposed section 24 work could not proceed.

The Democrats support the Bill. We support it because we see it as an urgent action which, if not taken, could lead to a number of heritage items being lost forever. We recognise that there are great difficulties being produced for some individuals and we think that these are unfair. They are matters that can be overcome, but not within the structure of our present Act.

Therefore, it is a matter of some urgency that the new Act goes through Parliament and is brought into being. It is important that that legislation addresses these issues in such a way that the problems do not recur. It is something we can do. We will not achieve it by way of amendment here on the run, but it can be done in a short period of time and I will be seeking an undertaking from the Government in terms of the timeframe it is working on, to ensure that it will be addressing the issues that I raised during the second reading.

The Hon. K.T. GRIFFIN: I want to touch upon the issue of retrospective legislation, legislation which takes away rights rather than grants rights or benefits. There is always a concern about legislation which retrospectively removes rights or benefits. Generally speaking there is not a problem with legislation which grants benefits or confers rights retrospectively. We had one of those only a few days ago dealing with the superannuation fund where benefits were granted and they were retrospectively applied from 1 July 1988.

There can be no difficulty with the conferring of rights: it is in the area of removal of rights where there is major concern. We have had a number of cases in the past two or three years where this Government has sought retrospectively to override decisions of the court and to take away rights retrospectively. I suggest strongly that its record in this area is of a Government that has lost its way on principle and, in fact, has sold its soul.

Let us take the water rates issue, a case which was decided by the Supreme Court and the Government retrospectively validated what had been passed in the Parliament. It argued that what the court had decided was not what the Parliament had intended but that is a matter of dispute.

There was the issue of Wilpena, where a court decision on a preliminary issue related to a potential development in a national park. The Government brought in legislation to override that. Prior to the last election, a decision was made by the High Court of Australia in relation to the sentencing of prisoners. The High Court said that what the Supreme Court was doing was wrong and was not in accordance with South Australian law. There was the situation where the Attorney-General came into this House and said, 'Well, that wasn't what was intended, and we can therefore pass legislation which will retrospectively remove the right of prisoners in relation to sentencing.'

Last year, I think, there was a decision about teachers where, as I recollect it, a method of calculation of salary and wages for a contract teacher was considered by the Industrial Court, and a decision was made in favour of the teacher. The Government brought in legislation that was to apply retrospectively in order to take away rights that had been established by the court. There was also the WorkCover Bill, which sought to do the same thing. On many occasions this Government has sought to override decisions—

The ACTING PRESIDENT (Hon. R.R. Roberts): There is too much audible conversation in the Council.

The Hon. K.T. GRIFFIN: This Government has sought to override the decisions of the courts that have decided that citizens have specific rights. Various Ministers come into the Parliament and say, 'Well, what the court decided was wrong.' That is a bizarre proposition. The courts are independent of the Parliament and the Executive; ultimately, they are accountable to the Parliament but only in a limited sense—in the sense that a judge can be removed from office by resolution of both Houses of Parliament. That is their only accountability. They are independent and, in our democratic society, they have the job of deciding what is the law.

No-one else decides that—they have that right, power and duty and, if they make a decision that the law says 'this' but the Government says 'that', the ultimate arbiter is the court. It is an untenable position for a Government to say, 'The court is wrong. It is not what we intended. Therefore, we will pass legislation to overturn the decision of the court.' We cannot have that situation prevailing in our society to the extent that it has prevailed in South Australia in the past few years, because it undermines justice, the integrity of the democratic system and the confidence that people have in the Parliament and in our laws.

On several occasions this Government has brought into the Parliament legislation to amend the Acts Interpretation Act, which has sought to allow the courts to take into consideration—where there is a difficulty in interpreting a piece of legislation—debates in the Parliament, committee

reports, other documents and papers. Fortunately, that has been rejected. If it had not been rejected, we would have been in the very difficult position of the courts, in an area of dispute perhaps in relation to this heritage legislation, having to look at the debates in this Parliament, perhaps at a statement tabled by the Government as to what it intended and at any committee considerations. The courts would have had to try to discern what was the intention of Parliament, not from the written word, but from the written word in conjunction with a consideration of the debate.

I defy any court to reach a conclusion as to what was intended by the Parliament just by looking at a speech by one member of Parliament or a Minister's statement of intention. The Parliament does not vote upon what the Minister has said or has tabled: it votes on the written word in the Bill formally before us. It is for that reason that I and the Liberal Party, joined by the Australian Democrats, have constantly objected to legislation that seeks to give the courts a right to look at what goes in Parliament beyond the printed word, which is ultimately passed by both Houses and assented to by the Governor.

It is an impossible situation if, to discern the intention of the Parliament, the court is to look at what is said in this House, which might be different from what is said in the House of Assembly. A member of the Government may say one thing whilst a member of the Opposition may say something else. The answers to questions asked in one House might be different from those given to the same questions asked in the other House. How can a court be expected to reach a conclusion as to what is the intention of the Parliament? In relation to the Bill before us the Government is saying, 'Well, what Justice Debelle decided was not what the Parliament intended.' There is no evidence before the Parliament, other than the Bill which was passed by both Houses, to say that Justice Debelle was wrong, or that there was some other intention of Parliament.

It may have been in the mind of the Minister; it may have even been in the mind of the Cabinet; but it may not have necessarily been in the minds of the majority of members of both Houses of this Parliament. It may also be that the intention is conveniently developed after the Bill is passed so that six years later, after legislation has been enacted, the present Government may say, 'That is not what the Parliament intended or what we intended.' Again, that is an untenable proposition in relation to this or any other legislation.

In South Australia we have always acted upon the basis that, what is in the written word passed by both Houses of Parliament is the law, and if it is poorly drafted or there is a problem with interpretation, the court must look at the whole legislation, not at what goes on in here, and make a decision on what has been formally agreed between the Houses. Therefore, in relation to the Bill before us, I defy anyone objectively to say that what Justice Debelle decided in the court was not what Parliament intended, and that it is contrary to normal understandings of the way in which the law operates.

In this case, the judge made a decision that the law which was to be applied to a development application was the law which was in force at the time the application was lodged. That is a clear principle of the law not only in relation to a development application but also in relation to just about anything else. That rule of law can be overridden and varied but only by specific Act of Parliament. In the City of Adelaide Development Control Act and in the Planning Act, there is no contrary intention clearly expressed, so we have a situation where the Adelaide Development Company has a right to proceed with an application based on the law as it is at the date of its application being lodged.

There may be many others who have the same rights: some who have lodged applications and others who may not have lodged applications. Those who have lodged applications are entitled under our system and rule of law to have their applications decided on the basis of the law as at the date of the application. This Bill seeks to change that situation and to override those rights.

I suppose it is akin to an expropriation or compulsory acquisition of property by the State. At least in a compulsory acquisition case, which is specifically governed by the Land Acquisition Act, there is a right to fair compensation. However, under this Bill, which seeks to override existing rights, there is not even a hint of compensation being available for persons whose rights have been trampled upon. There is nothing worse than a Government which believes that it can ride roughshod over the existing rights of citizens which have some value to them. In a sense, it is almost akin to bank nationalisation and all those other areas where the Government seeks to override existing rights. At the very least, the Bill should take effect when it is passed or, at worst, when it is introduced. That latter aspect should be used only in limited circumstances, not on a regular basis and taken to be the accepted position. I think that it ought to be regarded as the exception rather than the rule.

The question of when the Bill comes into operation is different from the question whether conservation orders should be permitted to be placed upon land which might be the subject of a development application lodged after the Act comes into operation. However much one might criticise the ability of the executive arm of Government to place conservation orders and to delay consideration of issues, the fact is that if the law says it can be done, then those who act under that law know what the law is. Those who made applications prior to the date of the Bill's commencement or introduction to Parliament are being grossly prejudiced because they acted under the law as it was and are now expected to comply with the law as the Government retrospectively wants to make it. Time delays, intervention by the executive arm of the Government, and ultimately the stifling of development rights, for example, have to be regarded with a great deal of caution.

The other problem with the Bill, if it is passed, and even if it applies only from the date of its introduction or of assent, is that it will introduce yet another area of uncertainty for those who have rights in relation to their property. They will receive no compensation for losing those rights by virtue of some later executive action.

The making of a conservation order, whether under the old Act or under the new, in whatever form it takes, the interim listing of a property and the final placing of an item on the State Heritage Register are all executive acts and they are not subject at the moment to any review or appeal. I have always been concerned about executive acts which are not subject to review, particularly when they deprive people of rights and depreciate the value of either property or those rights. It is important, as my colleague the Hon. Diana Laidlaw said, that there be some mechanism for appeal against an executive decision in order to have that decision reviewed. If an executive decision is not subject to any form of review, the person making the decision is unaccountable in any way, and the tendency may be for that person exercising executive power to do so unjustly and unreasonably, knowing that there is no mechanism for calling that person to account. I shall strongly support the Hon. Diana Laidlaw's proposition that there be a form of review.

In conclusion, although the Hon. Mr Elliott has referred to the Law Society, I think it is important to ensure that its view is clearly and comprehensively placed on the public record. The President of the Law Society writes:

The purpose of this letter is to inform you that the society objects to the Bill in its present form for a number of reasons.

First, the society objects to the proposed amendments to the City of Adelaide Development Control Act and the Planning Act in so far as they are expressed to operate retrospectively. Retrospective legislation is usually reserved for extreme cases, and I suggest the perceived evil in this case is not in that category. It is a grave step indeed to retrospectively change people's rights, particularly when commercial decisions have been made on the basis of those rights.

There are two aspects of the retrospectivity. The Bill will operate from the time of its enactment to retrospectively affect the rights of applicants where they have filed their applications after the commencement of the Act. The fact that the merits of heritage listing have not been considered for all buildings perhaps warrants this aspect of the retrospectivity. However, the Bill goes further and also operates to affect the rights of applicants as they existed prior to the introduction of the Bill. The Law Society opposes that aspect of the retrospectivity.

Secondly, the proposed amendment to section 24 of the South Australian Heritage Act has the potential to be exceptionally unfair. Its operation would rewrite the long standing procedures for town planning, and is not the sort of amendment one would expect to be rushed through the Parliament without allowing time for proper consultation. To understand our concerns in this regard it is necessary to understand the existing planning and heritage legislation (and consider its operation in concert with the amendments to the Planning Act and the City of Adelaide Development Control Act proposed in the Bill). Both the Planning Act and the City of Adelaide Development Control Act contemplate that planning approval can be granted for a development that affects (even by demolishing) an item of the State Heritage. That is, the heritage listing does not protect the building from redevelopment. It simply means that before it can be affected its heritage value must be considered and, of course, approval to affect the building must be obtained.

For example, under the Planning Act as a general rule the demolition of a building does not require planning consent. However, under that Act, if a building is an item of the State Heritage, planning consent is required from the planning authority for the demolition of the building. If the proposed amendments to the Planning Act and the City of Adelaide Development Control Act become law it will require an applicant to obtain the separate consents of two authorities, that is, the planning authority and the Minister. The time and money required to obtain consent to develop a heritage listed property is already considerable. The current proposal will compound the existing problems.

I suggest that at the very least sufficient time should be allowed to allow interested parties to comment on the proposal.

We suggest that if section 24 is to be amended, fairness demands that the proposed subsection (2) provides that section 24 does not prevent the carrying out of an approved development. It should not be limited to only those developments approved before a conservation order was put on the property in question.

It is important that the Law Society's views on the Bill are clearly on the record. With that, I conclude my remarks.

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

[*Sitting suspended from 1 to 2.15 p.m.*]

PETITION: PROSTITUTION

A petition signed by 38 residents of South Australia praying that the Council reject the Bill currently before it to legalise or decriminalise prostitution was presented by the Hon. J.C. Burdett.

Petition received.

PAPERS TABLED

The following papers were laid on the table:

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

Committee appointed to examine and report on abortions notified in South Australia—Report, 1990.

By the Minister for the Arts and Cultural Heritage (Hon. Anne Levy)—

Eyre Peninsula Cultural Trust—Report, 1990-91.

Metropolitan Taxi-Cab Act 1956—Applications to Lease.

QUESTIONS

DEPARTMENTAL FUNDS

The Hon. R.I. LUCAS: I believe that the Minister has an answer to a question I asked on 21 November about misappropriation of departmental funds.

The Hon. ANNE LEVY: Yes, I have a reply to the Hon. Mr Lucas's question, and I seek leave to have it inserted in *Hansard* without my reading it.

Leave granted.

On 5 September 1991 an unusual purchase was discovered at State Records, which was subsequently inadequately explained. A purchasing review was expanded to ascertain whether this was likely to be an isolated action or whether further unusual purchases had been made. It was also determined that revenue takings seemed irregular. Assistance from the Crown Solicitor was formally sought on 26 September 1991 to investigate further and provide advice. A formal report was received by State Services from the Crown Solicitor on 21 October 1991. The matter was referred to the Commissioner of Police on 25 October 1991 and no charges have been laid to date.

The following list of equipment, identified as potentially irregular in the early stages of review, was discussed with the employee concerned:

	$
15 x Wedgewood entree plates	169.57
Table cloth	80.75
Glasses, splade forks, corkscrew	220.28
2 x cordless phones and adaptor	447.16
9 x cordless phones	2 842.00
Facsimile machine	1 300.00
Glasses (Bohemian crystal)	346.50
	$5 406.26

Two cordless phones and the glasses were subsequently located in use in State Records. The employee returned the facsimile machine and made restitution of $3 131.46 for equipment that could not be returned on 24 October 1991. The employee repaid $698.40 for misappropriated cash takings on 24 October 1991.

The duties of the employee were changed as a result of the circumstances that came to light. In early November, the employee did initiate some further orders on behalf of State Records due to staff shortages but all of these orders were authorised by the Director, State Records. No further misappropriation is evident. The employee has been transferred to another business unit of the department into an activity without exposure to receipting or purchasing.

ART GALLERY EDUCATION PROGRAMS

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister for the Arts and Cultural Heritage a question about cuts to the Art Gallery's education programs and services.

Leave granted.

The Hon. DIANA LAIDLAW: A decade ago I am advised that seven Education Department project officers were sec-

onded to the Art Gallery of South Australia to assist teachers and students to appreciate the collection and the visual arts and crafts in general. This year there have been only two. Next year there will be only one—a junior ranking Grade I officer. Last week the gallery was told that the officer, who has held the senior education position for many years, was to be withdrawn immediately. He is to return to general teaching duties, and his position will not be readvertised.

This decision is a short-sighted move with long-term repercussions. It ignores the fact that the State has invested heavily in training this officer so that today he has a wealth of knowledge about the gallery's vast and valuable collection. It ignores the fact that the position of Senior Education Officer at the gallery represents an investment in the future by stimulating at an early age an appreciation among young people of our visual arts and craft heritage. It confirms that the Education Department is downgrading its education and arts programs.

I have today received a copy of a letter from the Elizabeth City High School to the Minister of Education. It states:

The loss in 1992 of one of the existing two seconded education officer positions will severely disadvantage our students. With the implementation of the South Australian Certificate of Education in 1992, which is largely resource-based in its learning strategies, this downgrading will impact on our schools in many ways:

1. Education officer ability to support SACE-related studies and programs will be minimal.
2. Schools will face increasing difficulty in booking the services of the education officer.
3. A virtual closedown of the much appreciated teacher in-service program.
4. Many student requests for research assistance will not be met.
5. Limited access to works not on public display.

For the gallery this is a double blow, and it is a particularly bitter experience because various annual reports over the past five years have noted, and I refer particularly to the year ended 1988-89, that:

. . . in the interests of more stable staffing it might be desirable to transfer the education officer positions permanently from the Education Department.

Does the Minister agree with the decision by the Education Department to withdraw the Senior Education Officer from the Art Gallery and not to readvertise this position? If not, has she asked the Minister of Education to intervene and reverse this decision, or has she undertaken to fund the position from the Arts and Cultural Heritage budget, for instance, by cutting a position within the Capita building bureaucracy and transferring the salary to the Art Gallery? I suggest the latter option to the Minister as she would recall that she has said on a number of occasions in the past three months that, at this time of belt-tightening, she would prefer to see administration and overheads, rather than programs, cut—an objective that I endorse.

The Hon. ANNE LEVY: I am sorry to disappoint the honourable member, but there will be no reduction in the number of education officers at the Art Gallery in 1992. I hope that that is not a disappointment to her but a source of joy. The Education Department provides teachers to a number of educational and cultural institutions in South Australia. These personnel are trained teachers; they are not people with an administration background who have been transferred to positions and asked to undertake a job that is more appropriately undertaken by someone with teacher training.

I am sure the honourable member would not suggest that someone be transferred from the Capita building to the Art Gallery because, as far as I know, no-one in the head office of my department has teacher training qualifications. Teachers are supplied by the Education Department to a large number of cultural institutions in South Australia. For the information of members, there are education officers at the Zoo, the National Motor Museum, the Botanic Gardens, the CSIRO Education Centre, the Festival Theatre, at Hahndorf, the Migration Museum, the Investigator Science Centre, the South Australian Museum, the Art Gallery, the Law Courts and Parliament House—as we all know—the Maritime Museum, the St Kilda Boardwalk, Old Parliament House, and, most recently, at Tandanya. Very many of these officers are supplied by the Education Department and they are highly qualified in teaching.

I am sure many will agree that these teachers have helped many thousands of school students to expand their knowledge and skills through visits to these various institutions. Indeed, the recently released report on attendance at three different South Australian art galleries is a tribute to the effective work that these education officers have been doing. For instance, the survey of visitors at the Art Gallery of South Australia showed that about 40 per cent of its adult visitors were under the age of 30. In fact, 60 per cent of its visitors were under the age of 40. I think this very much indicates the success, over a lengthy period, of having education officers at the Art Gallery. For instance; a very large number of children have benefited through our school visits program to the Art Gallery and as a result of the superb programs that have been put on for them there. They have learnt to love the institution and continue to visit it after they have left school. It is quite a different age spread—

Members interjecting:

The PRESIDENT: Order! The honourable Minister.

The Hon. ANNE LEVY: —from what I am sure many people would expect, and it is very different from that which would have applied in the past, when there was not this introduction to the Art Gallery to a very large number of school students in this State. It is certainly bearing fruit. I can assure the honourable member that there will be no reduction in education officers at the Art Gallery next year. There will be two positions and one has been advertised. I am sorry if she is not aware of the advertisement, but one position has been advertised. Another person will certainly be appointed early next year, but in the future the education officers at not just the Art Gallery but all those institutions I have mentioned will be appointed in a different way from the way they have been appointed in the past. The details of this new method of appointment are still being discussed with the various groups involved. I have certainly spoken to the Minister of Education on this matter and am quite confident with his reassurance that there will be no reduction in the number of education officers at the Art Gallery next year.

NATIONAL CRIME AUTHORITY

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

Leave granted.

The Hon. K.T. GRIFFIN: This morning in the Federal Parliament a report was tabled by the Federal Parliamentary Committee dealing with the National Crime Authority. One of the areas addressed by the committee report is a reference to the Inter-Governmental Committee which is comprised of Ministers having a responsibility for the general oversight of the National Crime Authority. In paragraph 6.28 of the report, the committee states:

In contrast, the submission from the IGC stated in relation to the committee:

> The IGC is firmly of the view that the IGC itself provides a better line of responsibility to ensure both the protection of civil liberties and the effective oversight of the operational and functional activities of the NCA.

It goes on to say in paragraph 6.29:

> This claim by the IGC is difficult to reconcile with the limited activities of the IGC. In the period July 1984 to October 1991, the IGC met on only 16 occasions. This suggests to the committee that the IGC has taken only a very limited role in monitoring the authority.

Paragraph 6.30 states:

> For example in the 1989-90 financial year the IGC met only once. Yet during this period the authority was embroiled in major controversies, including those relating to the operation of its Adelaide office and the abrupt resignation of its Chairman. The committee is alarmed at the infrequent meetings of the body claiming to provide 'effective oversight' over the authority. More adequate supervision by the IGC would have prevented the controversies arising in the first place.

Paragraph 6.31 states:

> Situations have arisen where the authority has been publicly criticised or public concern has emerged over some aspect of its activities. The committee considers that the IGC should have done more to make public its findings in relation to these matters so as to provide some reassurance to the public about the authority.

It then makes some further references to the authority's history, and it states in paragraph 6.34:

> The IGC appears to have done little, if anything, to address the problems.

It also says, in relation to a responsibility which the then Attorney-General, Senator Gareth Evans, suggested the Inter-Governmental Committee should have when the National Crime Authority Act was established, namely, that the IGC should take into account the question of the adequacy of police resources and whether a recommendation for action by the NCA could be more effectively undertaken by police agencies. The committee says in paragraph 6.39:

> It would seem that the IGC has not given the genuine consideration to the possibility of effective police action that Senator Evans hoped it would. Where more detailed consideration has occurred, it has apparently taken place outside the IGC.

The Attorney-General, as I understand it, is a member of the Inter-Governmental Committee and, as a member of that committee, he would be one of those who is collectively subject to the criticism of the parliamentary committee. My questions to the Attorney-General are:

1. Does he agree with the criticisms made in the report tabled in Federal Parliament this morning?

2. What action will he take to ensure that the criticisms are remedied?

The Hon. C.J. SUMNER: The answer to the first question is 'No' and the second question, therefore, is redundant. In the light of the honourable member's raising this matter, I would like to make some comments. The fact of the matter is that the joint parliamentary committee is miffed because the Inter-Governmental Committee proposed that it be abolished. That is a position which I support. I do not support the continued existence of the joint parliamentary committee so-called responsible for the oversight of the National Crime Authority; I think it is inappropriate.

Also, I think that it has not behaved properly on certain occasions. There is little doubt that people have used their position on that committee for fairly narrow political partisan purposes, and I do not think that has enhanced its effectiveness. But, apart from those difficulties, I think the existence of such a committee confuses the lines of responsibility for the NCA. While there is this joint parliamentary committee in addition to the Federal Attorney-General and the Inter-Governmental Committee of Ministers, there is confusion as to who is responsible for the activities of the National Crime Authority.

When the National Crime Authority was initially proposed, the seminar group that met in Canberra decided that there should be some form of independent monitoring, as I recollect it. The Bill introduced by the Federal Government contained provision for an independent judicial audit of the National Crime Authority with a capacity for citizens or others affected by activities of the National Crime Authority to complain to a judicial auditor, the judicial auditor then having the jurisdiction to examine those complaints and generally to have oversight of the activities of the National Crime Authority.

With respect to ASIO, there is an Inspector-General. In South Australia we have precedents for judicial or quasi judicial audits of the Operations and Intelligence Branch, the old Special Branch of the South Australian police and the Anti-Corruption Branch. When the NCA Bill was before Federal Parliament some years ago, the Democrats, in the form of Senator Chipp, moved to delete this proposal for a judicial audit and insert the joint parliamentary committee as a body to monitor the activities of the NCA. In my view, that was a mistake and, by the activities of the joint parliamentary committee, has since been seen to be a mistake.

In its review of the activities of the National Crime Authority, the unanimous view of the Inter-Governmental Committee, and as contained in our submission to it, was that the joint parliamentary committee should be abolished.

However, we were realistic enough to imagine that the Joint Parliamentary Committee would not be overly enthusiastic about a recommendation that it be abolished, even though we all thought that that would be the best course of action. We did propose that, whether or not it was abolished, the NCA ought to be subject to some form of independent judicial audit, and that was contained in the submission and a subsequent submission. I should say that, to try to overcome some of the difficulties of opinion between the governmental committee and the Joint Parliamentary Committee, we have had two joint meetings over the past few months to try to resolve some of those issues and no doubt they will be subject to further discussions when the Federal Government responds to the Joint Parliamentary Committee's report on its review of the NCA.

On the assumption that the Joint Parliamentary Committee remains in existence, I still think and the Inter-Governmental Committee still believes that there is a need for some independent audit or complaints procedure of the National Crime Authority. It is quite inappropriate and impracticable for a parlamentary committee of politicians to be able to deal effectively with complaints about the NCA. They do not have the skills to investigate these matters. I would have thought that most people would greet with some degree of horror the notion that in investigating a matter the Joint Parliamentary Committee can get down and look at what has gone on with operational matters in the NCA. I think it is fair to say that, to date, while there is some doubt about it, the Act does provide that the Joint Parliamentary Committee should not review decisions as to investigations that have been taken by the NCA. However, to our (the IGC's) way of thinking, that leaves a hiatus. It leaves citizens without an effective means of lodging complaints and leaves the NCA without an effective audit.

My own first view and that of the IGC was that the Joint Parliamentary Committee should abolish itself because it totally confuses the lines of responsibility, and it would be much better for the public and everyone to know that the NCA is responsible to democratically elected Government and, if it does not function through those democratically elected Governments, that questions be asked and issues dealt with. At present there is a confusion of the lines of

responsibility; no-one knows who is responsible. That would be cleared up by the abolition of the Joint Parliamentary Committee.

If it decides not to abolish itself, as I expect, I believe it should confine its activities to general oversight and policy issues. It has done some good work on witness protection and did a report on drugs, and that is the sort of area it should confine its activities to. Then, to deal with oversight which can look at operational matters and deal with complaints, there ought in my view to be a judicial audit or some form of independent audit inserted in the Act.

That is my view. I think that is certainly the starting point for all members of the IGC and that was unanimous; it was not done on party lines. The Hon. Mr Griffin's colleagues in New South Wales and the Northern Territory supported the views of the IGC on this topic. Ultimately of course it is a matter that will have to be resolved politically at the national level; it is a Federal Act of Parliament and the Federal Government will have to consider the views of the Joint Parliamentary Committee in its review of the National Crime Authority (that has apparently been tabled today), and it will have to consider the views of the IGC. I hope that further constructive discussions can occur and it is fair to say that at least part of the discussions between us when we have had our meetings have been constructive. I hope that that can continue to get to a position where there is more effective oversight of the NCA, but it is one thing for the Joint Parliamentary Committee to be critical of the IGC; I should say that I do not think the Joint Parliamentary Committee itself is by any means above criticism in its attitudes and behaviour.

CAVAN JUVENILE SECURE CENTRE

The PRESIDENT laid on the table the following report by the Parliamentary Standing Committee on Public Works, together with minutes of evidence:

Juvenile Secure Centre at Cavan.

NATIONAL CRIME AUTHORITY

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Attorney-General a question relating to the Federal parliamentary report on the National Crime Authority.

Leave granted.

The Hon. I. GILFILLAN: I take note in my explanation of the material that the Attorney has just given in regard to the IGC (Inter-Governmental Committee) and its attitude to the joint parliamentary committee and my question flows on from that. I will deal with the report in particular, in which a reference was made to the infrequency of the number of meetings of the IGC, and obviously in an explanation to a question it is appropriate to debate the matters that were raised by the Attorney as to the appropriateness or otherwise of the Joint Parliamentary Committee. However, it is significant to comment in this place that the Joint Parliamentary Committee is actually the only body we have which analyses the activities of the IGC, which is the body that the Attorney believes is the ultimate and competent body to oversee the NCA. In reference to the IGC, the report states that the IGC is:

> . . . firmly of the view that the IGC itself provides a better line of responsibility to ensure . . . the effective oversight of the operational and functional activities of the NCA.

However, the report claims that this is difficult to reconcile with the difficulties of the IGC, given that during the period of July 1984 to October 1991 that committee met only 16 times, a situation which, the report states, suggests the:

> . . . IGC has only taken a very limited role in monitoring the authority . . .

Given the widespread reporting by the media of the problems confronting the Adelaide office of the NCA during 1989-90, I believe it is appropriate to quote from the report a section which specifically refers to South Australia, as follows:

> For example, in the 1989-90 financial year the IGC met only once. Yet during this period the authority was embroiled in major controversies, including those relating to the operation of its Adelaide office and the abrupt resignation of its Chairman.

That was Mr Gerald Dempsey.

The Hon. C.J. Sumner: Who are you talking about?

The Hon. I. GILFILLAN: The head of the South Australian authority.

The Hon. C.J. Sumner: You said 'Chairman'; that was Mr Faris.

The Hon. I. GILFILLAN: Yes, in that context it was Mr Faris. Thanks to the Attorney. I am corrected in what I was adding to this report; there was also the abrupt relinquishing of his duties as head of the South Australian office, Mr Gerald Dempsey. The quote continues:

> The committee is alarmed at the infrequent meetings of the body claiming to 'effective oversight' over the authority. More adequate supervision by the IGC would have prevented the controversies arising in the first place.

In addition, the report adds that:

> . . . the IGC should have done more to make public its findings in relation to these matters, so as to provide some reassurance to the public about the authority.

The report goes on to state:

> . . . the committee considers that the IGC should have paid greater regard to the need to maintain public confidence in the authority and to make public more of the material the IGC receives from the authority . . . The IGC appears to have done little if anything to address the problems. As far as the committee can determine the IGC made no contribution to giving the authority strategic direction.

That part of the report is quite damning because it refers specifically to a time when Mr Mark Le Grand, the previous Chair of the Adelaide office of the NCA, had not been reappointed and the head investigator, Mr Carl Mengler, had resigned under unfortunate circumstances. It was also a time when industrial unrest was threatening the Adelaide office regarding the unfair treatment of Mr Mengler by the succeeding Chairman, Mr Gerald Dempsey. All members in this place will know that it was a very unhappy time during the 1989-90 period for the NCA in South Australia and its reputation.

It is in that light, bearing in mind that there was only one meeting of the IGC, which the Attorney has said should be the ultimate body overseeing the NCA, that I ask him how it is that as the South Australian representative on the IGC he did not call for a special meeting to deal with the chaotic situation pertaining in the Adelaide office. If he did, why was it that his request was turned down? Did the Attorney believe at that time that all was well in the Adelaide office? Finally, following the tabling of the minority report by the Liberal Party (to which I have not referred but which asks for a full inquiry into the Operation Ark matter), does the Attorney believe that that matter should be reviewed again in the light of the minority report?

The Hon. C.J. SUMNER: I have answered those questions in general terms. Obviously, the Hon. Mr Griffin has beaten the Hon. Mr Gilfillan to the mark today at least on the question of the NCA. I am operating from some disadvantage, because I have not read the report. I can only reiterate what I said in my answer to the Hon. Mr Griffin

about the report of the Joint Parliamentary Committee and its criticisms of the IGC.

The Hon. I. Gilfillan: The question was—

The Hon. C.J. SUMNER: Just a minute. In retrospect, one might say that certain things should have happened, but I do not generally accept the criticism made by the Joint Parliamentary Committee. As I said, it is a bit miffed because we felt it should be abolished, and that is still my position. It confuses the lines of responsibility. If members of the public know where they can go to get issues dealt with, they are better off. If an issue can be dealt with through the democratically elected representatives—those members of Parliament, whether Liberal or Labor—who are Ministers and who have the actual responsibility for the oversight of the operations of the NCA, that is where the responsibility should lie.

When we have a parliamentary committee such as the Joint Parliamentary Committee, which has behaved in the manner in which it has behaved, it is not beyond criticism itself—especially as the Liberal and National Party members of the Joint Parliamentary Committee without reference to the majority, as I understand it, tabled a minority report in Federal Parliament That included *in camera* evidence. There is no doubt that that soured relationships between members on the committee.

I think they regrettably saw their position on the committee as one that they could use for their own narrow political purposes and that, as I said before, was regrettable. I do not think that that body should remain in existence.

As to the circumstances in the Adelaide office in 1989 and 1990, those problems are well known. That has been explored in this Council on numerous occasions, including the differences of policy direction taken by the new Chairman, Mr Faris, and the obvious personality conflicts which arose during that time and which led to Mr Le Grand's leaving—he was not reappointed as the honourable member said: he chose to leave, no doubt because of his concerns about the directions that the new Chairman was taking and about the disputes which he had with him and which were obvious at least later in the year.

It was not immediately obvious that those concerns were unmanageable during 1989, but I think subsequently it became clear that there were differences of view within the authority during that period that did not assist in the proper functioning of the Adelaide office. When Mr Faris left (and the circumstances surrounding his leaving have been canvassed to a considerable extent in the media), the IGC went about trying to find a Chairman who could put the NCA back on track. That was the most effective thing it could do.

Thankfully, we were able to secure the services, principally through the work of the Federal Attorney-General, of Justice Phillips of the Supreme Court of Victoria, as he then was. He has now left the NCA and has been appointed Chief Justice of the Supreme Court of Victoria. He put the NCA back on a more even keel and he certainly ironed out the personality conflicts that existed. He set new directions that were approved by the IGC last year and everyone is now satisfied with what has been happening in the NCA, including the Joint Parliamentary Committee and Opposition members who previously have been critical.

However, that does not overcome the fact that there were problems in the Adelaide office. I have spoken about those problems in this Council before. They were regrettable and should not have occurred. To a considerable extent those problems affected the effective functioning of the office in Adelaide and they should not have occurred. There are reasons for that. Whether there is any point in rehashing those reasons I do not know: it might be of interest to historians, but I do not know what other purpose can be served by such rehashing.

I said in a radio interview a few days ago that, if the Joint Parliamentary Committee wanted to go back again over those issues, it is a matter for the committee. It can decide to do it and it is entirely up to it whether it does. The minority report, which I have not read but which members have referred to, apparently says that the committee should review the circumstances surrounding Operation Ark. I take it that the majority is of the view that that is a dead issue although, as I understand it, some aspects of that report are still being examined by the Joint Parliamentary Committee. That is in response to issues raised by Justice Stewart that were referred to in the media last week. He was critical of some of the findings of the earlier Joint Parliamentary Committee report on Operation Ark.

As I understand it—I am not privy to it—that issue is still in some form before the Joint Parliamentary Committee, but I make clear that, if it wants to investigate the circumstances surrounding Operation Ark, I have no objection to it. The committee is entitled to go ahead with that if that is what it wants to do. It has the jurisdiction to do it and, so far as I am concerned, it is a matter for that committee. I do not believe it would be a particularly productive use of resources. I think it is essentially an historical situation now, regrettably. In answer to the honourable member's question, I say that it is entirely a matter for the committee to decide.

The Hon. I. GILFILLAN: As a supplementary question, I asked the Attorney-General a question, and in his answer he reflected that the IGC is the premier body to oversee the NCA, and he recognises the turmoil that was in the Adelaide office in 1989-90. The report indicated that there was only one meeting of the IGC. Why did he not insist on the IGC meeting to deal with and consider the situation in the Adelaide office at that time?

The Hon. C.J. SUMNER: I have already answered that question. That was not a supplementary question: it was a question that the honourable member asked me on the first occasion. So it is essentially a question which is out of order. But if he wants me to repeat all that I said before, well, I will, but that will not satisfy him.

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: Well, the answer simply was that it was not immediately apparent, certainly during the time of the takeover.

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: No, that is not true. It became apparent subsequently. It was not apparent from the time of the takeover by Mr Faris from Justice Stewart that these problems occurred although, subsequently, it was clear that there were differences of opinion amongst some of the personnel. No doubt, if the joint parliamentary committee decides to revisit this circumstance, it will find out what those personality difficulties were. It will find out what were the policy differences, and they can report on it if they want to. So, what good that will do in the long run, I do not know. It will show what we know: that there were differences of opinion and of policy approach to the operation of the NCA. But I repeat: if they want to go ahead and investigate it, that is fine with me.

SEYMOUR SOFTWOODS LTD

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Minister representing the Minister of Forests a question about Seymour Softwoods Ltd.

Leave granted.

The Hon. L.H. DAVIS: Yesterday I asked a question—

Members interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: Yesterday I asked a question about Mr Gilmour, General Manager of Seymour Softwoods and his relationship with the Government of South Australia. Today I just want to raise with the Minister the matter of a prospectus of Seymour Softwoods dated 17 May 1991, current, as I understand it, until 16 May 1992, which invites the public to invest in a pine plantation to produce pine trees for sale. I have consulted with two industry experts and have also examined what I understand to be the Department of Woods and Forests' own prices. The information that I have received would indicate that the statements made in this prospectus for Seymour Softwoods are way out of line with industry experience, wildly optimistic in some cases, misleading in others and quite likely to provide good financial returns for Seymour Softwoods but perhaps unlikely to come within a bull's roar of providing returns for investors as claimed. As one experienced industry observer noted: 'Investors will not only get lost in the woods, but they will face the prospect of getting ringbarked as well.'

The prospectus indicates that contract prices for work and services for investors are $4 600 per hectare, which I understand is very much above what it would cost to establish the trees, together with the overheads involved. On top of that, Seymour Softwoods has a set of management fees of at least $150 per hectare annually, adjusted by at least 8 per cent per annum, and also 10 per cent of the net proceeds from the sale of the thinnings and clearfelling of the pine trees goes to Seymour Softwoods. In fact, in advertising a seminar on Seymour Softwoods and the merits of the investment, a South Australian financial management person stated that the main features of the investment are:

> Quick grow pine poles with income from eight to 12 years; three to five times your investment in 12 years; and 100 per cent tax deductible.

Page 5 of the Seymour Softwoods prospectus states:

> Seymour Softwoods Ltd intends to develop the pine plantations on a short-term planting and harvesting program. A short-term plantation and harvesting program should result in income for growers between eight and 12 years.

On page 6 it further states:

> Commercial returns are available from the thinnings and the clearfelling of maturing eight and 12-year pine trees. This is despite the fact that it takes up to 25 years for a pine tree to reach maturity.

Page 6 also notes:

> To maximise the commercial returns, Seymour Softwoods Ltd intends to develop or purchase a post and pine pole treatment plant. There is no guarantee that the maturing eight to 12-year pine trees will be sufficiently matured by the time the lease is determined so they can be marketed for commercial returns.

However, a series of statements appear on page 13 of the prospectus, which seem to be in conflict with the earlier statements and comments made to me, and which would indicate that the forest consultant's report, together with statements in the prospectus are, as I said, at wide variance with industry experience. For example, for the projected returns in the prospectus, the grower would need to receive the equivalent of three times the current royalties paid by markets and, as the forest consultant admitted:

> A collective marketing approach and the acquisition of a pine treatment plant wholly or partially owned by Seymour Softwoods group would be the only realistic way of achieving stated returns.

The industry reaction to the statement is that it is utter rubbish and absolutely fanciful. The planting site is, apparently, subject to occasional snowfalls, which could cause damage and bending in young trees. This bending would not attract buyers for these poles, of course. It is also suggested that there would be 2 000 trees planted per hectare, which is 400 to 700 stems greater than is the case with conventional forests. But that really does not increase production. It simply would mean lower diameter material from juvenile wood. It would not be as strong. In other words, it may well provide beansticks rather than solid poles.

The estimated return from the production of poles is $40 per tonne as return to the grower but, in fact, the current Woods and Forests Department royalty valuation on fence posts is only $15.16 per tonne and only reaches $40 per tonne at the age of 15 years.

A more realistic valuation of the production level would be half of what is stated, and even that may be difficult to achieve. There is absolutely no definition of what is meant by the term 'pole', and industry leaders say that the pine pole market is traditionally very competitive. Even the industry leaders have great difficulty making dollars out of pine poles or related products, even with their very substantial resources, manufacturing and wholesale reports. Given this information, my questions are:

1. Is the Minister aware of this prospectus? Do not the estimated rates of return of $40 a tonne from the production of poles fall well out of line with current Woods and Forests Department valuations?

2. Does the Minister believe that these matters are of sufficient concern to refer this matter and the prospectus to the Australian Securities Commission?

The Hon. BARBARA WIESE: The Minister might require a little more information—the explanation may not have been quite lengthy enough—in order to reply to these questions. Certainly I will be happy to refer the questions to him and no doubt he will bring back a detailed reply.

LIGHTWEIGHT LAMB CARCASSES

The Hon. G. WEATHERILL: Has the Minister of Tourism an answer to my question of 17 October about lightweight lamb carcasses?

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

Leave granted.

In response to the honourable member's question, my colleague the Minister of Agriculture has provided the following response:

> The agreement, administered by the Australian Meat and Livestock Corporation is due to expire at the end of 1992.
>
> The Minister of Agriculture has taken up this matter with the Minister for Primary Industries and Energy (Hon. Simon Crean) seeking his support for the removal of this agreement at the earliest opportunity.

INFORMATION UTILITY

The Hon. M.J. ELLIOTT: I seek leave to make an explanation before asking the Attorney-General, representing the Premier, a question in relation to information utility.

Leave granted.

The Hon. M.J. ELLIOTT: On 7 June this year the *Advertiser*, in an article on page 4 entitled 'Information Utility a world first', said:

> The Premier, Mr Bannon, yesterday described the Information Utility as 'an essential platform' on which to build the proposed multifunction polis.

I rang the multifunction polis office to get more information, because it sounded quite exciting. I was told, 'We do

not know anything about that. It is something that the Premier is doing.' Further, this person said, 'It is something that the Government wanted to do for a long time anyway—to have a shared database for all departments.' I then got on to the Premier's office and got a copy of the press release that was put out. That states:

> Once the utility is established, business, Government and members of the public in South Australia will be able to 'plug in' . . . it will provide major computing facilities for the Government . . . Eventually, the facilities in the Information Utility would be extended to educational institutions, business and the community generally.

Also in June 1991, in the Government Management Board publication, *Up Front*, there is an article quoting the Premier. Part of it reads:

> Although we use computers very ably for a variety of other purposes, public servants have not, except within some individual agencies, managed to take advantage of internal computer systems to communicate better internally or with the customers whom we serve.

A little later it says:

> By aggregating the computer networks and databases currently scattered throughout the public sector, we are creating a utility which will be able to provide 'information' to our customers as other utilities provide other essential services—the computer equivalent of an extraordinarily powerful library, if you like.

It also states:

> We anticipate that the vast majority of our current computers will be able to link effectively into the proposed system.

Another article in the same publication, quoting Mr Bruce Guerin, the then Chairman of the Government Management Board, states:

> We estimate that the more efficient use of communications will also mean a saving of as much as $90 million over the next five years, with the Government gradually becoming less of an 'owner-operator' and more of a purchaser of CIT services.

It is worth noting that similar claims were made when the JIS was set up: that it would save large amounts of money. Instead of the original cost of $10 million, it reached a final cost of $50 million, even though it did not end up doing everything that it was supposed to do when first proposed. It is also worth viewing this proposal in the light of recent sales of other Government assets such as the ETSA generators and forests in the South East. My questions are as follows:

1. Before the Government signs agreements with the company with which it has been negotiating, will it inform the public adequately and ensure that there is full consultation about the form that this information utility will take?

2. Why has the Government not gone through such a process and gone to public tender rather than working behind closed doors with the companies?

3. What confidence does it have that it will save money in the light of the JIS experience?

4. Will the information utility set-up involve the sale and then lease-back of existing Government computer equipment and other facilities?

5. What systems will be transferred to the Information Utility? The report suggested most Government computer systems, but clearly there are some, such as JIS and the Motor Vehicles Department, which are quite sensitive.

The Hon. C.J. SUMNER: I will refer that question to the appropriate Minister and bring back a reply. Mr President, as there are only five minutes to go before Question Time concludes, I understand honourable members want inserted in *Hansard* a number of replies to questions and perhaps we could do that now.

The PRESIDENT: Yes.

REPLIES TO QUESTIONS

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

Leave granted.

The Hon. L.H. Davis: It is certainly open government on the last day.

The Hon. C.J. SUMNER: Hang on. If you want to get into that business, we will. The fact of the matter is that in most cases the notices for these questions were given out several days ago, so we do not want any of that stupid idiocy from the honourable member opposite.

PRIVACY COMMITTEE

In reply to **Hon. M.J. ELLIOTT:** (14 August).

The Hon. C.J. SUMNER: The replies are as follows:

1. I am prepared to release all correspondence that I have had with the Privacy Committee, including reports submitted by the committee in relation to freedom of information and legislation.

2. Resources are allocated to the committee as part of the normal budgetary process. The committee was allocated an initial budget in 1989. In subsequent years, representations have been received from the committee, and in discussions with officers of the Attorney-General's Department, a recommendation has been made regarding resource and staffing levels.

In deciding the committee's budget allocation, the Government must balance the needs of the committee with competing claims for funds from other areas.

As to future allocations, the Privacy Support Unit has now been transferred to State Records, which is within the Minister of State Services' portfolio. State Records is also the unit responsible for implementation of the Freedom of Information Act 1991. Therefore, it is the focal point for agencies when determining policies on collection, retention, use, storage and release of records.

3. As I have already advised, I believe that the Privacy Committee does function effectively.

COURT REPORTING SERVICES

In reply to **Hon. K.T. GRIFFIN** (19 November).

The Hon. C.J. SUMNER: The Court Services Department was advised in June 1991 that MicroCAT Incorporated went into receivership following litigation. However, a new company, Pachyderm Enterprises Incorporated, was formed and this company has taken up all aspects of the MicroCAT business.

The Court Services Department is currently receiving the same efficient service from Pachyderm Enterprises Incorporated as it received from MicroCAT previously. Two enhancements to the software have been provided in the past three months, the most recent having been received on 9 October 1991. The most recent purchase of a data writer (shorthand machine) was in September 1991. In addition Pachyderm Enterprises Incorporated has updated the shorthand machine to that supplied by MicroCAT, and is continuing to provide, as required, maintenance on any MicroCAT shorthand machines.

The decision of the Court Services Department to change vendor from Stenograph (C.M.C. being the Australian agent), to MicroCAT was not because maintenance costs were too high, but was a commercial decision based upon a number

of factors including functionality, performance, ease of use, training, support and, of course, price.

The current cost comparison for CAT equipment and software between Pachyderm Enterprises and Stenograph (suppliers of Cimarron software) is as follows:

	Pachyderm $	Stenograph $
Data Writer	3 285	4 650
CAT Software	4 000	9 500
Software Support	Nil	450 per unit p.a.

The Department has currently in use 57 MicroCAT/Pachyderm CAT units. Cost savings achieved in purchase of CAT equipment through the change in vendor has been of the order of some $470 000.

I can therefore advise that there have been no difficulties in the development of computer aided transcription with MicroCAT equipment; the current software and shorthand machines present no difficulties; and there is no plan to change systems. In fact, there has been direct saving of millions of dollars because of the business-like approach adopted by the Court Services Department.

MARINE ACT

In reply to **Hon. J.C. BURDETT** (21 November).

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

The Marine Act Amendment Act No. 34 of 1987, which amended the Marine Act 1936 by inserting a new Part VA, will not be proclaimed as Part VA was repealed in the Pollution of Waters by Oils and Noxious Substances Act Amendment Bill which passed both Houses of Parliament on 14 November 1991. The Bill is awaiting Royal assent and steps to have it proclaimed are currently under way.

TEACHER INVESTIGATIONS

In reply to **Hon. R.I. LUCAS** (29 October).

The Hon. C.J. SUMNER: Further to the honourable member's questions, I advise of the following:

1. The inquiry is impartial. The role of Ms Pike was to identify files for examination, act as liaison officer between the department and the Crown Solicitor's Office and prepare chronology of investigation procedures on each file. The actual examination of the process was conducted by Mr Moss and he alone provided advice.

2. Yes. The role of the Crown Solicitor was to examine the adequacy and fairness of the Education Department's investigative procedures. It was not part of the inquiry to advise on the appropriateness of any penalties imposed.

3. Ms Pike is receiving training and development in general administrative law and practice. This includes preparing legal documentation and court work. She has had no formal training in evidence gathering and special interviewing techniques.

DANGEROUS SUBSTANCE LICENCE FEES

In reply to **Hon. PETER DUNN** (4 November).

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

1. No. These increases form part of the department's overall cost-recovery strategy.

2. The 1991-92 increase of 30 per cent is a continuation of the Department of Labour's policy, first implemented in 1988-89, to fully recover departmental running costs under the Dangerous Substances Act.

This is in accordance with the Government's policy that where services are provided to a discrete identifiable person or organisation then steps should be taken to fully recover the costs of providing these services.

It is considered that the services provided under the Dangerous Substances Act are of a specialist, advisory and consultancy nature and consequently costs should be fully recovered in accordance with Government policy.

3. It is probable that licence fees will increase at a level greater than CPI in the future. However, it is anticipated that full cost recovery will be achieved in this area in the 1992-93 financial year if an increase similar to the 1991-92 increase of 30 per cent is again applied.

WORKPLACE REGISTRATION

In reply to **Hon. J.F. STEFANI** (29 October).

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

1. This is not, and never was, a backdoor taxation system. The legislation as enacted by Parliament is being enforced.

2. Revenue from workplace registrations in 1989-90 was $1 646 192 and in that year there were some 42 000 registrations.

In 1990-91 the new arrangements commenced, that is, employer registration via WorkCover. The revenue remitted to the Department of Labour from WorkCover in that year was $2 742 079. Some of the increase over the previous year would have been attributable to the greater number of registrations—in effect an increased compliance with the law and some due to inflation.

3. The number of workplaces registered with the Department of Labour in 1989-90 was in the order of 42 000. The number of employers registered by WorkCover in 1990-91 was in the order of 57 200. The old system of workplace registration entailed payment of a set fee for up to 6 employees and in the case of workplaces employing more than 6 a fee per worker. Thus it is not possible to specify the total number of employees employed at the registered workplaces. Employer registration, as now carried out by WorkCover is based on a percentage of levy, which is based on total remuneration not on the number of employees.

UNION TACTICS

In reply to **Hon. R.J. RITSON** (24 October).

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

Without further details it is not possible to give a definite answer to this question. There are a number of awards, both State and Federal, which contain physical working condition requirements. If the employees at the premises mentioned are covered by such an award the employer is required to provide, as a minimum standard, the physical working conditions prescribed. Failure to do so would put the occupier in breach of the award and subject to any consequences that may ensue from that breach. Simply, an award requirement is obligatory under the law.

RURAL PLANNING REVIEW

In reply to **Hon. M.J. ELLIOTT** (31 October).

The Hon. C.J. SUMNER: The Premier has provided the following response:

The call for a rural planning review is a matter already under consideration by the Government. Those working on the Metropolitan Planning Review have developed a range of strategies which can be modelled elsewhere. Regional development with an emphasis on service provision and industry development, including in non-metropolitan areas, is being considered as a part of the Planning Review. The Local Government Association continues to be involved in the development of these strategies.

In relation to the specific concerns regarding the Barossa Family Day Care Office, the Minister of Children's Services has advised that the Children's Services Office is aware of the education and care needs of families with young children in the Barossa region. It is therefore seeking to strengthen or extend existing services and there is no intention to withdraw or reduce those services.

At Nuriootpa discussions are under way between the Children's Services Office, the local council and the kindergarten to prepare for renovations to the kindergarten. It is intended to move the Barossa Family Day Care Office into this renovated building. This co-location of service for young children is seen to have many benefits. Publicity of the range of services is easier from one focal point and access for parents is improved.

HIGH SPEED TRAINS

In reply to **Hon. DIANA LAIDLAW** (29 October).

The Hon. C.J. SUMNER: As indicated to the honourable member, I referred her questions to my colleague the Premier. I have been provided with the following details:

1. The call for infrastructure initiatives by the Premier to generate employment specified taxation incentives as one of several options to be pursued. Some projects of interest to South Australia were listed as examples but it was made clear that only those projects which were economically justifiable should be considered.

2. The State Government has clearly outlined its belief in the importance of the Adelaide-Melbourne standard-gauge line in the process of its negotiations on the NRC Agreement. The Commonwealth Government have advised that this is a strictly commercial decision for the NRC Board and the Commonwealth Government.

CORONER'S ACT

In reply to **Hon. R.J. RITSON** (12 September).

The Hon. C.J. SUMNER: In response to the honourable members questions I advise that:

1. The Coroner's Act Amendment Act 1990 has been proclaimed to come into operation on 1 January 1992. When the Act was passed concern was expressed that adequate notice should be given to ensure that persons affected by the amendment are made aware of their new obligations under the Act. Originally it was intended to provide notification of the amendments to medical practitioners and hospital authorities in the handbook prepared and distributed by the Coroner.

This matter was discussed with the Coroner. However, my office was not advised that the handbook distribution to the relevant persons was completed.

The proclamation of 1 January 1992 will provide an opportunity to write to relevant organisations advising of the commencement of the new provisions. This should allow persons in charge of institutions to have adequate time to become familiar with the commencement of the new requirements.

2. As the amendment Act will come into operation on 1 January 1992 and as relevant organisations including the AMA will be advised of this fact, I would not think it necessary for the Coroner to revise his notes to the medical profession. However, this would be a matter for the Coroner.

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

Leave granted.

GIBRALTAR MAILING SCHEME

In reply to **Hon. J.C. BURDETT** (30 October).

The Hon. BARBARA WIESE: In reply to the question asked in the Legislative Council by the Hon. J.C. Burdett on 30 October 1991 regarding the direct mail scheme operating from Gibraltar, I advise the following:

(1) The Commissioner for Consumer Affairs continually issues media releases warning the general public in the State of the risks associated with questionable direct mail schemes, particularly those promoted from overseas countries, as part of the department's consumer education program.

(2) On 28 October 1991, the Commissioner through local radio stations and a press release warned consumers not to send money to the Gibraltar-based marketing organisation. A copy of the Commissioner's release is available for the honourable member should he so wish.

(3) The Commissioner's advice to consumers is to dispose of any questionable, direct mail material sent to them.

(4) The Department of Public and Consumer Affairs is very active in the education of consumers and through the networks which it has set up passes information on current issues such as this one.

COMMERCIAL AND PRIVATE AGENTS

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

The Hon. BARBARA WIESE: Section 38 of the Commercial and Private Agents Act 1986 was in essence an enabling provision like section 30 and section 51 (i) of the 1972 Act. Throughout the life of this legislation, the occasion has not arisen for exercising the power so as to impose a ceiling on approaches by commercial agents for debtors to pay collection charges.

The principles which should rule these situations are now under active review. It is expected that proposals affecting section 38 will be fully developed before the next Parliamentary sittings.

Section 40 was originally suspended to allow for the development of a code of practice. It is now considered that the work of section 40 is done by the subsequently enacted section 56 of the Fair Trading Act. It will be proposed that secion 40 be repealed whenever the Commercial and Private Agents Act 1986 is next amended for other reasons.

SGIC

In reply to **Hon. L.H. DAVIS** (14 August).

The Hon. BARBARA WIESE: On 14 August 1991 the Hon. L.H. Davis asked:

Why has the Minister of Consumer Affairs in her term of office not accepted the advice of the Commissioner for Consumer Affairs with respect to legislation ensuring that SGIC complies with Federal insurance legislation and guidelines.

I am advised that the issues of enacting legislation in South Australia to require SGIC to comply with some Commonwealth legislation was considered by the Department of Public and Consumer Affairs in 1985. The then Minister of Consumer Affairs requested the Treasurer to have his officers consider such legislation. Treasury advised that it saw no problems arising from the absence of legislation in South Australia.

I point out that a fundamental distinction must be made between: legislation governing the consumer activities of insurers in the marketplace; and the 'prudential supervision' of insurers. (For example, stipulations on what types of investments insurers are permitted to make, liquidity requirements, etc. which are aimed at ensuring the solvency of insurers.)

Only the first of these areas should be considered a 'consumer' matter. In his reports of 1984 and 1985 the Commissioner was referring only to the first of these areas. Prudential supervision of insurers is quite beyond the jurisdiction of the Minister of Consumer Affairs.

OFFICE VACANCIES

In reply to **Hon. L.H. DAVIS** (12 September).

The Hon. BARBARA WIESE: Adelaide has traditionally been one of the more stable markets in Australia and the least affected by the traditional cyclical swings in the real estate market. Adelaide Core Direct Vacancy factor of 12.51 per cent that is a total of 111 410 m^2 according to the latest BOMA figures pales into insignificance compared to the figures of 18 per cent plus, and increasing, in Melbourne and Western Australia and the increasing figures in Sydney. Adelaide on the other hand is stable and in a good position to capitalise on the Australian economy's recovery.

MURRAY BRIDGE SCHOOLS

In reply to **Hon. L.H. DAVIS** (29 October).

The Hon. BARBARA WIESE: As indicated, SACON's own workforce will be involved in the refurbishment of the four schools to ensure that the workforce is fully occupied. With regard to ongoing maintenance on the schools at Murray Bridge, SACON maintenance personnel located at or near Murray Bridge will be undertaking the work. Any work outside the trade skills of these SACON personnel will continue to be contracted to local private contractors.

GOVERNMENT EMPLOYEE HOUSING

In reply to **Hon. L.H. DAVIS** (29 October).

The Hon. BARBARA WIESE: The Office of Government Employee Housing is projecting an additional 40 houses will be disposed of in the 1992-93 financial year.

YATALA BUILDING

In reply to **Hon. L.H. DAVIS** (29 October).

The Hon. BARBARA WIESE: In relation to physical information kept on the Yatala Labour Prison, the site was last surveyed in October 1989 and validated by SACON in June 1991. It is confirmed that no current record exists on a building that was bulldozed 60 years ago.

SACON ASSET REGISTER

In reply to **Hon. L.H. DAVIS** (29 October).

The Hon. BARBARA WIESE: The upgrade of the information relating to the physical assets of Government agencies held within the SACON asset register will be implemented in two stages. Stage 1 involves a pilot physical audit program of the assets of five agencies; namely DETAFE, Environment and Planning, Correctional Services, Recreation and Sport and Treasury; and also SACON's own assets. It is expected that the first stage will be completed by the end of this financial year. The cost relating to Stage 1 will be up to $50 000. The exact cost is unknown at the moment, pending expenses relating to the physical audit of assets/properties around the State.

Stage 2 involving a physical audit of assets of the remaining Government agencies will commence on completion of Stage 1. Based on the expected number of assets relating to these agencies (including Education Department) this will be by far a larger exercise than the pilot program. Costs involved in Stage 2 have not been estimated.

GOVERNMENT EMPLOYEE HOUSING

In reply to **Hon. L.H. DAVIS** (29 October).

The Hon. BARBARA WIESE: The attached confidential list of houses vacant at 1 November 1991 is provided as requested. I have not included the list for insertion in *Hansard* for security reasons.

OFFICE OF FAIR TRADING

In reply to **Hon. L.H. DAVIS** (31 October).

The Hon. BARBARA WIESE: The following information was provided to me by the Office of Fair Trading:

The manufacturer of the offending 'children's folding chairs' was contacted by the Office of Fair Trading on and after 1 May 1991 after one of the chairs had been discovered in a Toyworld store. The field officer faxed photographs of a chair obtained from Toywonder of Unley to the manufacturer, the Wool Factory of Victoria and later rang the manufacturer to determine whether or not the offending chair was in fact one of his company's. A Mr Colbert of the Wool Factory agreed that the chair was one of theirs. The officer advised that the chair did not comply with the safety standard applicable in South Australia and that it was an offence to sell such chairs. Mr Colbert advised that these chairs were old stock and that he would have the chairs altered or modified. The officer told Mr Colbert that a certain store had already been asked to remove the chair from sale. Mr Colbert said he would look into the matter.

I might add that this same manufacturer was also contacted by the Consumer Affairs Bureau of Queensland in October 1990, following an incident that took place in Proserpine, Northern Queensland where a child's folding chair, sold by a Toyworld store, caused the end of a two and a half year old's finger to be severed. The Queensland Consumer Affairs Bureau advised that it had been discovered the chair was manufactured by the Wool Factory of Victoria and in addition to passing the information to other States also passed it to the Wool Factory by advising the General Manager, Mr Andrew L'almont and by faxing a copy of the complaint form.

The information passed to the Office of Fair Trading in South Australia was in turn passed to field staff who were engaged in a monitoring exercise involving children's folding chairs in general and many toy outlets in the metropolitan area were visited. Several children's folding chairs which did not comply with the safety standard were found, but none of these was manufactured by the Wool Factory. During this monitoring exercise a Toyworld store was visited and was found not to carry any children's folding chairs which did not comply with the safety standard.

A South Australian manufacturer of a children's folding chair, which was found not to comply with the standard, initiated a voluntary recall, advertised the matter in the newspapers and contacted all of its outlets. This is a very responsible approach to this subject and one which is expected across the board when safety issues are drawn to the attention of traders, manufacturers and distributors by consumer affairs authorities throughout Australia. This of course is much easier to control when the manufacturer is local.

I was also made aware of the Queensland incident and, and as a result, I issued a public warning. I will quote my Press Release verbatim:

PRESS RELEASE

5.10.90

Major retailers in Adelaide are withdrawing children's folding chairs from sale following Office of Fair Trading warnings that the chairs could cause serious injuries.

The chairs do not comply with State safety standards that were introduced in 1985 to minimise the risk of children suffering hand or finger injuries.

The Minister of Consumer Affairs, Barbara Wiese, said the potential for injury was high and this week a child in Queensland had lost a finger tip through the scissors action of a collapsing folding chair.

The Office of Fair Trading was already undertaking a monitoring of retail outlets for chairs that did not comply with safety regulations and the chair that caused the injury in Queensland is apparently not on sale in South Australia.

The type of chairs that are causing concern are manufactured both overseas and in Australia.

The most dangerous are those that are closed by springs and have thin strips of bracing metal in the design.

The springs can snap a chair closed with considerable force and the metal strips act like a guillotine.

Ms Wiese said the popular steamer or director style of wooden folding chair now was being manufactured in a child's size.

Although there are fewer metal parts in this design, the potential is there for a child's fingers to be crushed.

The South Australian standard on children's chairs concentrates on the 'trapping spaces' between the folding components and sets minimum distances.

The retailers are now planning voluntary recalls of the chairs and the manufacturer of the director's chair is looking at modifying the design to meet the standard.

Ms Wiese said the standard applied to only the childrens folding chairs and children were still at risk when handling any type of folding outdoor furniture.

She said anything with a scissors closing action was hazardous.

My recommendation for children's outdoor seating that is 100 per cent safe is a tartan rug.

An Office of Fair Trading person also warned the public on radio about such chairs.

In relation to the Wool Factory chairs resulting in the issue of Trading Infringement Notices on 31 May of this year, the Office of Fair Trading did contact the Company that has for some time now been loosely termed 'Toyworld'. That Company is Associated Retailers Ltd, another Victorian Company, which was involved in the distribution of toys and other children's items to many retailers including Toyworld and Zigzag franchises. It was as a result of these inquiries and as a result of inquiries to individual Toyworld and Zigzag stores, that the Officer was able to identify the manufacturer of the offending chair.

The activities of the Office of Fair Trading culminated in the removal from sale of the particular Wool Factory chair and examinations of the chair and modified versions of the chair by the Standards Laboratory. A modification of the chair is currently under review by the Trade Standards Advisory Council and a request for exemption under the regulations has yet to be determined by the Commissioner for Standards.

If the Honourable Member wishes to have some clarification on the current records held by the State Business and Corporate Affairs Office and the Australian Securities Commission in relation to such business names as Toyworld and Zigzag and such companies as Associated Retailers Ltd, Toyworld Ltd and Toycorp Ltd, I would be happy to furnish the information provided by the Office of Fair Trading. It is not exhaustive, but it does indicate that Associated Retailers Ltd is currently the distribution organisation more commonly known or referred to as Toyworld.

Although we have all, and I include the Hon. Mr Davis in this, used the overall name of Toyworld to mean 'the Company' or 'the chain', that is not precisely correct in fact.

The company Toyworld Ltd (a Victorian Company) became 'Toycorp Ltd' in 1988. Toycorp Ltd is currently under external administration.

However, the yellow pages advertising of Toyworld and Zigzag Stores shows the head Office to be Associated Retailers Ltd. Australian Security Commission records and those of the State Business and Corporate Affairs Office lend confirmation to this. The actual association between the various Toyworld stores and Zigzag stores, is I believe a loose association based on distribution. Almost all of those stores appear to be individually owned by persons other than Associated Retailers Ltd or Toycorp Ltd.

Finally, I would like to give the honourable member and the House some statistics obtained from the Accident Surveillance Unit of the Health Commission. I understand this information emanates from statistics compiled by the Queen Elizabeth Hospital and the Adelaide Children's Hospital. These figures relate to accidents involving folding chairs of all types between 1987 and 1991:

(1) 27 cases were reported in all

(2) 23 of these cases involved children

(3) There were three different types of injuries recorded as follows:

(a) 13 of the accidents involved children or adults (but predominantly children) caught in folding chairs, that is, the folding parts of the chairs.

(b) 11 of the injured persons (predominantly children) were injured as a result of falling from unstable chairs.

(c) 3 injuries were sustained by persons who fell against folding chairs.

A breakdown of the injuries in these cases clearly shows that the matter is of a serious nature; that is, there were three amputations, three crush injuries, four fractures and 10 lacerations. It is because of statistics of this nature that safety standards cannot be ignored and must be viewed with appropriate degrees of seriousness by Officers monitoring the regulations.

I am satisfied that Officers from Fair Trading have acted appropriately. I do not accept the detail preceding the honourable gentlemen's questions, I will not intervene in relation to the issuing of the trading infringement notices nor will there be any apology or refunding of moneys to those people who have expiated the offences by paying the trading infringement fees.

SLAUGHTERHOUSE LICENCE FEES

In reply to **Hon. PETER DUNN** (11 September).

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

1. Licence fees were last increased on 1 July 1984. The new licence fees therefore represent an annual increase of 8.3 per cent for abattoirs and 16.7 per cent for slaughterhouses and pet food works. The licence fees for slaughterhouses and pet food works were increased to $200 to bring them in line with licence fees for poultry processing works which were set in 1986. Tasmania increased the licence fees for a slaughterhouses, game meat processing works and pet food works from $100 to $203 in 1991.

2. The Meat Hygiene Section costs the Government $371 000 per annum of which only $28 750 is recovered in licence fees. The Government's intention is to move towards greater cost recovery of the regulatory component of the costs. The proposed amendments to the Meat Hygiene Act will bring kangaroos, rabbits, boning rooms, smallgoods manufacturers, cold stores and pet food wholesalers under the Act. The Commonwealth and the Tasmanian Department of Agriculture have a policy of full cost recovery and their rates for inspection range from $45 to $119 per hour.

3. No. Slaughterhouses situated further from Adelaide will not need to pay more for their licences if a fee for inspection is introduced.

4. In many cases local government is unwilling to carry out inspections for the authority. Even where this may be possible it would be unfair to charge some licensees and not others. There is also the question of evenness of application of the law. The honourable member may recall that it was the issue of differential application of legislation that led Parliament to pass the Meat Hygiene Act in 1980.

NORTHERN AREAS ACCESS ROUTES

In reply to **Hon. PETER DUNN** (24 October).

The Hon. BARBARA WIESE: The roads and public access routes from Broken Hill to the Northern Flinders Ranges will be reviewed by a public consultation process beginning next year, once proposed routes within the Flinders Ranges District have been finalised. A small distinctive sign or logo is being developed to use at track junctions and any other location where tourists may be confused as to which track is the authorised public access route. Other routes will be marked, where necessary, for private station use only. However, the main source of information for these routes will be a map and education package which will indicate both public access routes and public roads.

ROXBY DOWNS SOLAR ENERGY

In reply to **Hon. I. GILFILLAN** (9 October).

The Hon. BARBARA WIESE: The Minister of Mines and Energy has provided the following information in response to the concerns raised by the honourable member.

1. Roxby Downs' arid climate and height above sea-level make it a comparatively favourable area for solar energy compared with other areas on the same latitude; to say that it is one of the most favoured areas in the world for solar energy may be an exaggeration.

2. At the time the Roxby Downs infrastructure was being designed there were a number of studies into the economics of electric/gas water heating versus solar units.

The additional capital cost of installing solar units was discounted over the life of the solar heating to obtain a present value. Similarly the additional annual operating costs of electric and gas heaters were discounted over the same time span to produce present values for comparison.

The studies showed that although there was not much difference on a Present Value basis between solar, gas or electric water heating, the up-front capital costs of solar water heaters were substantially higher. However, in recognition that solar heating is ecologically desirable and that SACON and the Department of Mines should be setting an example, Everhot solar heaters were installed on the Municipal/State Government building and on the new Police Station.

No solar heaters were installed at the Recreation Centre because the shower/changerooms tend to have peak loads at the end of sports sessions and instantaneous heaters were more appropriate.

3. If there are financial savings to be made, solar heaters will be installed. Solar power generators are not currently economic, on the scale required.

4. No. The powers of the Minister of Mines and Energy do not extend as far as 'instruct'.

EXPIATION NOTICES

In reply to **Hon. K.T. GRIFFIN** (8 October).

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

1. There was no threat. I understand that there was a statement made by an officer of the Department that all suppliers of goods have legal responsibilities where the goods are the subject of 'information or safety standards'.

The statement relating to fines for multiple breaches of the Act was that where expiation notices were not issued, the supplier was liable to prosecution for each breach, that is, each pair of sun-glasses offered or exposed for sale. The Department would of course take the Crown Solicitor's advice on how many offences to charge as there may be hundreds of offending articles for sale in any one store.

2. The policy of the Office of Fair Trading is to issue expiation notices for each brand of offending goods. Therefore, two notices were issued to the chemist in question for two brands of sun-glasses even though 20 offending pairs of sun-glasses were exposed for sale.

If the trader refused or failed to pay the expiation fees, he or she would be prosecuted for two offences of offering or exposing sun-glasses for sale in breach of the standard. There would be no separate prosecutions for the other 18 pairs of sun-glasses (even though such prosecutions could be taken) although the total number on sale would probably be revealed by the evidence in the case.

MOUNT LOFTY DEVELOPMENT

In reply to **Hon. DIANA LAIDLAW** (27 October).

The Hon. BARBARA WIESE: I support in principle the initiative and efforts of the Mount Lofty Tourist Association to establish better facilities at the Mount Lofty summit. Negotiations are in train with the National Parks and Wildlife Service who are responsible for the summit as part of the Cleland Conservation Park. The association's proposal is for a temporary facility to cover the period until the establishment of more substantial facilities in the Mount Lofty precinct. The Government has an agreement with the Mount Lofty consortium for the development of the St Michael's site. That agreement does not stipulate a date by which development must be undertaken. However, it does include provision for the termination of the agreement by either party.

DOMESTIC VIOLENCE

In reply to **Hon CAROLYN PICKLES** (23 October).

The Hon. BARBARA WIESE: The following information was provided by the Minister of Family and Community Services in response to the honourable member's questions:

The State Government funds a number of services aimed at reducing incidents of domestic violence. The Department for Family and Community Services provides funds in the following areas:

S.A. Domestic Violence Prevention Unit

This Unit was set up in 1988 to implement the recommendations contained in the Domestic Violence Council Report, 1987.

Work of the Unit has included the following:

- assisting Government and community agencies to adopt policies and procedures appropriate for domestic violence clients
- encouraging all educational institutions to include domestic violence in their coursework
- in particular tertiary training courses for eight key occupational groups are being approached concerning inclusion of information on domestic violence in their curriculum
- input into legal reforms to ensure consistent and improved responses to domestic violence victims and perpetrators
- numerous community and professional education activities including production of information booklets for doctors and lawyers/legal workers

The Unit is assisted in its work by the Domestic Violence Prevention Committee. Appointments to this Committee are made by the Minister of Health and Family & Community Services and comprise representatives from a number of government and non-government agencies with mandates for domestic violence clients.

Emergency Financial Assistance—$33 000 in the 1990-91 financial year for victims of domestic violence.

Domestic Violence Contact Officers in each district centre

Crisis Care Unit—operates a crisis intervention service

Family and Community Development Unit administers funds for services under the Supported Accommodation Assistance Program (SAAP). This is a joint State/Commonwealth program which currently allocates $3.74 million per annum to services for victims escaping domestic violence. These include 13 women's shelters (with one shelter for Aboriginal women) and the Migrant Women's Emergency Support Service which offers assistance to domestic violence victims from non-English speaking backgrounds. A further $3 million is allocated to family services under this program, with a significant number of clients affected by domestic violence. Expansion of SAAP services are currently being considered by the relevant Ministers. Particular attention is being given to expanding Outreach Services. There are currently two funded services—one in the city (Domestic Violence Outreach Service) and one pilot program at Millicent.

The needs of remote and isolated areas (including services for Aboriginal people) and services for children affected by domestic violence are also being targeted.

Other Services/Initiatives

The Domestic Violence Service was established in 1985 to train workers dealing with domestic violence. Fifty per cent of this agency's time is spent in training, 25 per cent on community education and 25 per cent as direct service to victims and perpetrators.

Family violence is on the agenda of the Government's Crime Prevention Strategy. Many of the local crime prevention committees are also incorporating this issue into their work plans.

In September 1991, six Police Officers began a new Domestic Violence Unit located at the Elizabeth Police Station to service the northern area. This group has the task of ensuring improved and more consistent police responses to the issue. If the pilot is successful, it is expected to extend it into other police regions.

The South Australian Housing Trust has a program to provide assistance to victims of domestic violence in order that they can relocate to safe and secure housing.

Many of South Australia's Community Health Centres and Child and Adolescent Mental Health Service also offer services to domestic violence clients.

Sixteen Domestic Violence Action Groups are located throughout South Australia. These groups aim to ensure that their local community knows about domestic violence and that sufficient resources are available to combat it. They are not funded but their work is supported by the Domestic Violence Prevention Unit.

South Australia participated in the National Domestic Violence Education Campaign which ran from 1988 to 1990. $100 000 was allocated by the State Government to assist with the campaign.

National Issues

The Director of the South Australian Domestic Violence Prevention Unit is the State Government's representative on the national Committee on Violence Against Women. This Committee is assisting the co-ordination and development of policy, programs and legislation on a national basis. The Government is committed to continuing strategies aimed at reduction of this serious social ill and has funded a range of government, community and Church-based services and initiatives. These have combined well to raise the issue as one warranting public concern and attention.

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

Leave granted.

MOUNT DARE TELEPHONE COMMUNICATIONS

In reply to **Hon. PETER DUNN** (22 October).

The Hon. ANNE LEVY: My colleague, the Minister for Environment and Planning, has advised that the provision of the existing high frequency radio telephone service at Mount Dare is the responsibility of the facilities lessee, not the National Parks and Wildlife Service. No additional levy is payable in respect of this service.

In addition, the National Parks and Wildlife Service has requested that a Telecom public telephone installation be provided at Mount Dare.

INBARENDI COLLEGE

In reply to **Hon. M.J. ELLIOTT** (30 October).

The Hon. ANNE LEVY: My colleague, the Minister of Education, has advised that adult students are not being denied the opportunity to get a matriculation education. All students wishing to return to full or part time school studies with a view to gaining their SA Certificate of Education will be accepted for enrolment.

Enrolment ceilings have been set for those schools providing specific programs for adults in order to limit the recreational programs that some schools had been providing. Bridging programs for adults wishing to return to school studies can still be offered within these targets. By setting an agreed enrolment target schools can be staffed before the end of this year for the commencement of the following school year in a more predictable way. This is necessary because final enrolment figures are not known until the first few weeks of the school year.

The Elizabeth West ceiling is that of the school's own estimate of its 1992 enrolments. No reduction to this has taken place.

HERITAGE BUILDINGS

In reply to **Hon. M.J. ELLIOTT** (23 October).

The Hon. ANNE LEVY: This reply has been available since 15 November. My colleague, the Minister for Environment and Planning, has advised that the recent judgment in the Supreme Court arising from the Gawler Chambers case was that if a development application had been lodged, then a later conservation order could have no effect, because the planning authority must determine the application having regard to the law in force on the day the application was lodged. The conservation order was considered by the court to be new law brought into effect.

This is contrary to previous advice the Government had received on the effect of a conservation order, and certainly contrary to the intention of the legislation which created conservation orders in 1985.

As the honourable member is aware, Cabinet agreed to place Gawler Chambers on the permanent State Heritage List, as recommended by the State Heritage Advisory Committee. The *Gazette* notice was published on 4 November 1991.

The Government will introduce legislation to clarify the effect of conservation orders, and will do so promptly.

EDUCATION CUTS

In reply to **Hon. R.I. LUCAS** (28 August).

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

1a. I refer the honourable member to the reply provided in Estimates Committee A, 19 September 1991 in response to the member for Hayward (*Hansard* page 185) and the additional information provided on notice in the form of a table showing current and proposed classification levels for GME Act positions. Similar information for Education Act positions is shown in the following table:

Education Act positions:

	Current	Proposed
Principal Level	—	18.0
Second Teacher	302.0	164.4
Total	302.0	182.4

Exact levels subject to classification assessment.

b. The Education Department has twelve positions classified in the senior management ranks (EL-1 to EL-3). The proposed organisational structure will require eleven senior management positions. Other senior positions are:

	Current	Proposed
ED-3	64	41
ED-4	18	4
ED-5	1	—
	83	45

2. The positions were disestablished on 28 August 1986 and funding for them ceased in the 1986-87 budget. I refer the honourable member to the answer titled 'Back to School Initiative' in response to a question on notice from the 1990 Estimates Committee A, *Hansard* page 567, and to information regarding 67 positions provided as one of the replies to several questions from the honourable member during the Appropriation Bill debate 25 October 1990, *Hansard* page 1415, and also to the table titled '1986-87 Budget Strategy—67 Surplus Positions' which was provided to the honourable member as part of that answer.

SCHOOL CLOSURES

In reply to **Hon. R.I. LUCAS** (31 October).

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

1. The contents of the Premier's letter are widely known and the honourable member already has a copy. The remarks are consistent with previous communications concerning the Western Suburbs Reviews, for example, Director-General of Education's media release of 30 July 1991.

2. The Minister of Education made the decision that the Croydon Primary School would not close on the recommendation of the Western Suburbs Primary School Review Team.

3. None.

4. No. The processes of the Western Suburbs Review have been observed.

STATE TRANSPORT AUTHORITY

In reply to **Hon. DIANA LAIDLAW** (14 November).

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

1. No, the Minister did not see the STA submission before it was forwarded.

Contrary to the assertion by the Honourable Member, the STA's views are not at odds with the Minister's on private sector participation. The STA submission, in relation to support for diversifying and deregulating community transport is something the Minister has consistently been advocating, it does not however also mean support for contracting STA services.

The submission does not advocate private sector participation in STA services.

However, the STA is keen to co-operate with the private sector to improve services in areas outside its area of responsibility. This is a cornerstone of its publicly stated Transit Link concept.

2. No, the Minister did not approve, nor did he need to approve it.

3. The Minister does not favour this approach as the STA is doing an excellent job in improving the cost effectivenss of its services. However, he also does not rule this out as something that could happen at some time in the future.

TAXI DRIVER TRAINING SCHEME

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

The Hon. ANNE LEVY: This reply has been available since 23 November. My colleague, the Minister of Transport, has provided the following response:

1. On 25 September 1991 the Metropolitan Taxi-Cab Board widened the scope of the Compulsory Taxi Driving Training Scheme to include prospective hire vehicle drivers. (This was the circumstance which prompted the Minister's letter to the Board).

2. The Minister of Transport wrote to the Board, because it was at that time the Board widened the scope of the scheme to include prospective hire vehicle drivers. In a section dealing with public safety, the Hire Care Operators' Association of South Australia states hire vehicle drivers should go through an accredited driver training scheme. At this stage, the Minister of Transport is not convinced that the Compulsory Taxi Driver Training Scheme is appropriate for hire vehicle drivers to learn about public safety. Representatives of the Hire Car industry agree with the Minister.

3. The Government does not intend to impose regulation on a business which does not need it. As the Minister has recently stated, the hire car industry does not wish to have unnecessary regulation imposed on it.

DRIVING TESTS FOR THE ELDERLY

The Hon. ANNE LEVY: I have a reply to a question asked by the Hon. Miss Laidlaw on 9 October about driving tests for elderly people. A reply was sent to the honourable member through the post by the Minister of Health. As the question was asked in the Council, I seek leave to have it inserted in *Hansard* without my reading it.

Leave granted.

As Minister for the Aged, I have an obvious interest in this issue and, following consultation with the Minister of Transport I advise that while the government has abolished the practical driving test for drivers aged 75 years and 80 years and older, there is still a requirement that drivers wishing to retain their driver's licence at 70 years and over must provide an annual medical certificate to the Registrar of Motor Vehicles.

The decision therefore takes older people with dementia into account, as the fundamental means of screening for such drivers, namely through the medical profession, will continue through the requirement for an annual medical certificate.

The decision has occurred as a result of the recognition that elderly drivers are under represented in accident statistics and that the public investment in aged driver testing does not bring corresponding road safety benefits, particularly given that medical fitness to drive and not actual age is the significant issue. In relation to the detection of dementia in drivers and its notification to the Registrar of Motor Vehicles the annual medical certificate must be completed by the examining doctor and the examination should be undertaken with reference to a publication entitled 'National Guidelines for Medical Practitioners in Determining Fitness to Drive a Motor Vehicle'.

The publication is published by the Federal Office of Road Safety and has some South Australian addenda along with specific sections on dementia and the aging driver. The publication is supplied to doctors free of charge. In addition, an article from the Department of Road Transport in the November edition of the South Australian Medical Bulletin draws the attention of members of the Australian Medical Association to their obligations under section 148 of the Motor Vehicles Act which requires doctors and other health professionals to notify the Registrar of Motor Vehicles of medical conditions which are likely to affect a person's ability to drive. The opportunity was taken to remind members of the publication described above.

The Hon. ANNE LEVY: I also have replies provided by the Minister of Transport to a number of questions asked by the Hon. Miss Laidlaw on 17 October in this Chamber during the debate on the Appropriation Bill. As these replies are now available, I seek the leave of the Council to have them inserted in *Hansard* without my reading them.

Leave granted.

LABOUR PRODUCTIVITY REVIEW

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

The Hon. ANNE LEVY: The study undertaken by the consultancy firm Price Waterhouse Urwick reviewed the labour productivity of STA's bus operations.

The analysis of labour productivity was broken down into the following categories:

- Operations costs
- Maintenance costs
- Corporate and administration costs
- Capital costs
- Total costs

All these cost categories were then divided by the primary measure of output (vehicle kilometres) to establish appropriate performance indicators.

Since the Price Waterhouse study was completed the STA has, using the same methodology, completed a similar study for rail operations and updated the bus operations study.

The outcomes of these latest efforts are as follows:

	Percentage improvement from 1988/89 to 1990/91	
	Bus %	Train %
Operations costs/kilometre ...	−1.74	3.42
Maintenance costs/kilometre ..	−0.15	3.60

	Percentage improvement from 1988/89 to 1990/91	
	Bus %	Train %
Corporate and administration costs/kilometre	27.06	6.87
Capital costs/kilometre	21.20	−19.86
Total costs/kilometre	6.47	3.42

The cost impact of the purchase of new railcars and the replacement of the signalling system has had a major effect on rail indicators in recent years.

In relation to the query on the 27 per cent reduction in overhead costs for bus operations, the primary reason for this occurring is the implementation of substantial productivity improvements in Head Office. For instance, over the period of the reduction (1988-89 to 1990-91) Head Office staffing fell from 276 FTEs to 208.7 FTEs (24.4 per cent)

In relation to the query on a study of the labour productivity in tram operations, I advise that such a study has not yet been undertaken. However, as soon as workload priorities allow it the tram productivity study will be undertaken, probably later this calendar year.

TARGET NET COST SAVINGS

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

The Hon. ANNE LEVY: The cost savings over the life of the Corporate Plan were preliminary targets developed by Treasury and adopted by the State Transport Authority (STA).

Over the two years 1989-90 and 1990-91, savings in real terms of $5.01 million were achieved.

Savings have been made by achieving economies over the whole spectrum of the STA's operations. The principal areas where savings have been achieved were as follows:

1. Reduction in operating expenses through better utilisation of resources and reduced overheads.
2. Reduction in maintenance expenses through more efficient workshop practices and materials usage.
3. Reduced loan interest due to reduced borrowing of capital funds and a decrease in interest rates.
4. Reduced lease payments due to the completion of lease contracts.

For 1991-92 to 1993-94, specific areas have not yet been identified.

SALARIES AND WAGES

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

The Hon. ANNE LEVY: The Estimates of Payments on page 84 shows proposed expenditure for 1991-92 for salaries, wages and related payments as $83.908 million compared with actual expenditure for 1990-91 of $90.618 million. This represents an apparent reduction of $6.711 million. However the 1991-92 figure does not include:

- an amount of $2.1 million which is the estimated cost of the National Wage Case which had not been allocated at the time the Estimates were prepared.
- $3 million which is the full year effect of the Voluntary Separation Package for approximately 100 staff.
- $1.611 million will be saved by rationalisation of services that were not specifically identified at the time the budget was submitted.

There are not conductors employed on STA trains and there are no proposals to cut the number of drivers. In respect to Guards and Assistant Guards, numbers may fall as these people are voluntarily redeployed to other areas of the STA and the broader Government sector. This decrease in numbers will be offset by the employment of additional Transit Officers. No cuts are proposed in salaries due to amendments to industrial agreements.

With respect to the increase of $5.728 million in salaries and wages and related costs in intra-agency support services, this amount consists of the unallocated estimate of the increase in the National Wage Case, plus related increases in Long Service Leave, Annual Leave and SA Superannuation contributions. In addition, it contains the full year effect of the Payroll Tax increase in 1990-91.

STATE TRANSPORT AUTHORITY BUILDING

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

The Hon. ANNE LEVY: STA House is owned by the South Australian Superannuation Fund Investment Trust (SASFIT), and the Treasurer of South Australia. The State Transport Authority (STA), has leased the building from SASFIT.

Monthly payments to SASFIT are based on the original lease principal of $27 million, repayable over 40 years with a real interest rate of 6.25 per cent. The 1991-1992 rental cost for STA House is $1 951 683 (interest and principal).

The STA has occupied eight floors since 1 July 1987; four floors are subleased by the STA.

As a consequence of the general reduction in head office staff and the relocation of some engineering staff to the new Mile End Depot in early 1992 two additional floors will be subleased.

STATE TRANSPORT AUTHORITY CHARTER

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

The Hon. ANNE LEVY: In 1990-1991 revenue received from charters was $336 460. Specific costs are not maintained for this operation because this activity represents less than .2 per cent of the total bus kilometres operated.

Charter rates are based on the average cost of operating the STA's buses plus an overhead allowance to account for administrative overheads. All costs mentioned in the question with the exception of sales and company taxes, which the STA is not required to pay, are included. The actual rates will not be provided for commercial reasons. It is not Government policy to allow private bus services to compete with STA for the operation of routes.

GUARDS AND THE TRANSIT SQUAD

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

The Hon. ANNE LEVY: The cost of operating Guards on suburban rail services, based on an average staffing strength of 63 Guards for the 1991-1992 financial year, is approximately $2.2 million.

The difference between the previous staffing strength of 109 Guards, prior to the changed method of operating and the 63 in 1991-92 is in the order of $1.6 million.

The State Transport Authority (STA) currently employs 63 Guards.

All existing Guards are guaranteed employment as Guards and will be rostered on trains.

Transit Officers will be deployed as a community policing function across STA services.

RAIL STATIONS

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

The Hon. ANNE LEVY: A number of factors will be considered before any station is closed, including:

(a) number of passenger boardings and alightings over the whole day or in specific time periods;

(b) number of passengers who are inconvenienced by the train stopping at that station. If *(b)* is large and *(a)* is small, it is difficult to justify retention of such a station;

(c) availability of other public transport services—for example, proximity to next station, proximity to bus routes, etc;

(d) cost of maintaining a station. If a station requires major maintenance work and few passengers use it, it is difficult to justify its retention.

(e) land use in the vicinity, both existing and potential.

(f) interchange potential.

The promotions at the inner suburban stations mentioned were undertaken not with a view to closing the stations but rather to test the impact of a promotional campaign on the patronage at those stations.

No similar surveys have been undertaken at other stations specifically for the purpose of analysing potential closure, although surveys indicate that 28 stations each cater for less than 150 passenger boardings per day.

At this time there are no specific plans for closure of any stations.

INDUSTRIAL AWARDS

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

The Hon. ANNE LEVY: In December 1990 the STA lodged application with the Australian Industrial Relations Commission seeking the insertion of clauses into the Rail Operating Award to provide for permanent part-time employment and split shifts. The matter is the subject of ongoing hearings before the Commission. The section of the Award covering Railcar Drivers already contains provisions for split shifts.

The awards covering Bus Operators contains provisions for split shifts and part-time employment.

The introduction of split shifts would not produce significant savings. However, the advent of part time employment would provide savings the extent of which would be largely dependent upon the number of existing rail employees who would be willing to convert to part time employment.

ADELAIDE TRAMCAR RESTAURANT

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

The Hon. ANNE LEVY: The Agreement between the State Transport Authority and the Adelaide Tramcar Restaurant Pty Ltd was terminated on 30 September 1991 following a breach of the Agreement conditions by the Adelaide Tramcar Restaurant Pty Ltd.

An extensive marketing campaign by the Agent for the Mortgagee in Possession failed to attract an interested party to either take over the lease of the converted tramcar or to acquire the tramcar in an endeavour to avoid the breach of the Agreement.

Under the terms of the Agreement the STA now has three months from the date of the termination to decide the future configuration of the tramcar.

BUS AIR-CONDITIONING

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

The Hon. ANNE LEVY: The last 50 Volvo B59 buses will not be replaced by the new MAN buses until 1997. The bus operators union, the AT&MOEA, have argued that as some depots have fleets consisting of almost entirely B59's a number of these buses should have driver's cabin air conditioning to allow their members from these depots a chance of some relief from the heat during summer.

The cost of supply, installation and commissioning of these air conditioning units is $176 250.

GRAFFITI AND VANDALISM

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

The **Hon. ANNE LEVY:** During the period 1 July 1990-30 June 1991 the Transit Police Division proceeded against 257 offenders for vandalism offences. This number includes both adult and juvenile offenders. The State Transport Authority does not collate data regarding court sentencing.

The STA does not pay costs involved in supervising juveniles on community service orders. Some adults on CSO's, however, are allocated to STA work gangs and are effectively supervised by STA supervisors. No separate costs are kept of this type of supervision, and no separate costs are kept of cleaning materials provided for this purpose.

TRANSIT SQUAD PATROL BASES

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

The Hon. ANNE LEVY: It is not proposed to establish Transit Police bases at all STA bus depots and interchanges, only at St Agnes and Elizabeth Depots and Noarlunga Interchange. Response times to incidents on the transit system depend on the nature of the incident. In the case of emergency situations, for example where a staff member or passenger is in danger or has been assaulted, the nearest patrol is deployed to the scene immediately; it could be a Transit Police patrol or one from the South Australian Police. Response times vary according to day/night and seasonal factors. It is always the objective of Transit Police to provide a swift response to emergency situations.

NEW BUSES

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

The Hon. ANNE LEVY: The new 307 MAN buses will have surfaces inside and out that are termed 'vandal resistant'. The initial batch of buses will have fabric seats which will be specially treated to allow graffiti to be easily cleaned off. The STA will also trial several non-fabric seats to assess their vandal resistance and public acceptance for possible introduction on the remainder of the new buses.

All the new buses are designed to allow for future fitting of guidewheels if and when required, However, no decision has been made at this stage to fit any of those MAN buses with guidewheels for use on the Busway.

TRAVEL CONDITIONS

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

The Hon. ANNE LEVY: Since the changes to the Conditions of Travel in May 1991, 11 people have been issued with Transit Infringement Notices concerning 'entering a paid concourse without a valid ticket.' The Expiation Fee for such matters is $50. All fines have been paid ($550).

NEW BUSES

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

The Hon. ANNE LEVY: Twenty-five standard diesel buses, four new technology low floor diesel and 100 CNG buses have been ordered intitially in the contract for 307 new MAN buses. Whether the remaining 178 buses will be low floor diesel or CNG powered will be decided in mid-1993 after assessment of their performance in service. The first 100 CNG buses will be operated from Morphettville Depot only.

It should be noted that there are construction constraints that make it impractical to use CNG engines on low floor buses, which offer significant advantages to the travelling public.

The Authority will purchase gas from the South Australian Gas Company which will own the infrastructure. The capital and servicing cost of the CNG infrastructure will be incorporated by the South Australian Gas Company into the unit cost paid by the STA for each litre of gas. It is understood that the capital cost of this equipment is about $800 000 for a fleet of 100 buses.

No timetable has been set for installing CNG refuelling facilities at other STA depots. This will depend on the total number of CNG buses eventually purchased.

RESALE OF TICKETS

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

The Hon. ANNE LEVY: At present, there is no proposal to remove Conductors from trams or to remove on-board ticket sales from buses.

TICKET OUTLETS

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

The Hon. ANNE LEVY: There are 486 Licensed Ticket Vendors and 180 post offices included in a total of 700 off-board sales outlets.

No specific target has been set for the total number of outlets.

Twelve outlets have revoked their earlier contract to act as STA ticket selling agents. One of these has since resumed selling tickets.

The commission to Australia Post is determined as a percentage of the value of tickets sold.

The commission paid to Australia Post last year was $298 697 and the estimate for this year is $400 000.

The commission paid to Licensed Ticket Vendors last year was $41 780 and the estimate for this year is $200 000.

The proportion of the STA fare assessed to cover the value of the commissions paid to Licensed Ticket Vendors was 2 per cent. The commission paid to Australia Post is not available for commercial reasons.

SUBWAYS

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

The Hon. ANNE LEVY: The STA has a policy to close subways where alternative at-grade crossings can be provided, as funds become available.

This year it is expected that the subways at Hove and Woodville Stations will be closed and replaced by at-grade pedestrian crossings.

The Hove Station subway closure is part of a complete station upgrade including construction of pedestrian access ramps and mazes at both ends of the platform and lighting, at a cost of $125 000.

The Woodville Station subway closure includes the construction of pedestrian access ramps and mazes to the Woodville Road end of both platforms, relocation of the Woodville signal cabin, fencing works and shortening of the platform, at a total cost of $120 000.

CAR PARKING SECURITY AT INTERCHANGES

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

The Hon. ANNE LEVY: Since Transit Police patrols were deployed at Elizabeth and St Agnes Depots and the Noarlunga Interchange in May 1991 special attention has been given to car parks near STA facilities in those areas. As a consequence there has been a noticeable decline in car theft and interference.

The Authority has no plans to invest capital in physically securing such car parks because it considers security beyond patrols a wider community responsibility.

BUS SECURITY SCREENS

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

The Hon. ANNE LEVY: Ten buses will be fitted this year with security screens for assessment, with the first one due in traffic by the end of October.

Seven MAN buses with screens will be located at Elizabeth Depot whilst three Volvo buses will be located at Lonsdale Depot.

A decision on the total number of buses to be fitted with screens will not be made until after a reasonable assessment period.

The Hackney Bus Depot is leased from the Crown by way of a Miscellaneous Lease. This lease is due to terminate at completion of the Mile End Bus Depot. The fate of Hackney Bus Depot and Goodman Building will then be the resposibility of the Minister of Lands.

RAIL DISPUTE

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

The Hon. ANNE LEVY: The cost savings to the State Transport Authority as a result of the rail shutdown amounted to approximately $20 000 per day.

One month's rental of retail properties in the Adelaide Station and Underpass equivalent to $16 151.23 has been forgone as a consequence of this dispute. The STA did not undertake an assessment of the impact of the dispute on those retailers in terms of lost revenue, cuts in staff numbers, hours and future viability.

DECENTRALISATION

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

The Hon. ANNE LEVY: Significant changes have been made to decentralise decision making at depots:

- The centralised structure of the Operations Branch has been dismantled. All Depot Managers now report to the Director of Operations.
- Depot Managers are directly responsible for the provision of all customer service activities affecting their individual depots. They now can and do make immediate service changes to meet customer requirements.
- Servicing workshops have been placed under the control of each Depot Manager. Depots are now free to reallocate their resources to meet local needs provided technical standards are met.
- Computer services and purpose built software are being installed at depots to provide support for the decentralised functions. Head Office support systems are progressively being recast to reflect this, for example, occupational health and safety, accounting, training, personnel functions.
- Review of work arrangements by Depot Managers has resulted in significant work practice changes in all aspects of depot operation. Individual Depot cost savings are not available as Depots were previously not costed separately. These changes, however, have produced net cost reductions that have contributed to the improved financial performance of the STA in both 1989-90 and 1990-91.

This overview treats the subject generally, rather than referring to the specific progress towards decentralisation at each depot. This is because the very nature of the process is such that local managers are introducing different work practices which best suit the needs at each depot within overall STA policies.

HERITAGE LISTED PROPERTIES

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

The Hon. ANNE LEVY: The STA has several heritage listed properties and in some instances full railway station yards are listed as heritage items. The signal box at Woodville is to be demolished and the North Adelaide Railway Station's future is being resolved by negotiations with the Adelaide City Council and the STA.

The contents of and wooden top to the Woodville signal cabin have been relocated to the grounds of the Port Dock Railway Museum. The concrete walls of the lower part of the building will be demolished.

Country communities and country councils generally lack the funds to purchase heritage railway stations, even though current market value is dramatically reduced due to condition of the buildings. As a consequence, it is improbable that these groups will have the funds to restore and maintain such structures in the long term. Surplus STA property is sold at current market value and no consideration of selling at less than this rate is proposed.

STA RAIL LINES

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

The Hon. ANNE LEVY: The STA does not intend to replace all of the wooden sleepers on the Outer Harbor line with concrete or steel sleepers this financial year.

Sleepers will be replaced on an as required basis predominantly utilising second-hand timber sleepers released by steel sleepering carried out on other lines.

The value of this program for this financial year is approximately $10 000.

RED HENS

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

The Hon. ANNE LEVY: The State Transport Authority will dispose of the Red Hens by tender as it has done in the past.

CROUZET PORTABLE VALIDATORS

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

The Hon. ANNE LEVY: Eighty-eight Crouzet Portable Validators (PVALs) have become surplus to operating requirements as a result of removing manual ticket sales from trains.

The STA intends to use these PVALs for spare parts in other PVALs and validators in buses, trams and railcars. Many internal components are interchangeable with other ticketing equipment. The value of the 88 PVALs for spare parts is estimated to be $30 000.

In addition, the STA has advised the only known Australian operator using similar PVAL equipment, MTT Hobart, that surplus PVALs are available for purchase if required.

FREE TRAVEL

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

The Hon. ANNE LEVY: Yes.

STATUTES AMENDMENT (STATE HERITAGE CONSERVATION ORDERS) BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 2444.)

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I thank members for their contributions to this debate. I am pleased to see support at least for the second reading from all members. In replying to the points made by members opposite in this debate, I think it is best if I focus on the key issues of the Bill. I do not propose to be diverted to some of the more wide-ranging matters that some members raised.

The major issues in the second reading contributions relate to what is called retrospectivity and to the appeal provisions. It has been stressed before that this Bill is, in effect, interim in nature, as it was described by the Hon. Mr Elliott. It has been introduced to cope with an existing situation pending a total review of the Heritage Act, which is expected to be debated in this Parliament during 1992. However, the current situation is such that the Act cannot be left without amendment until that time.

The Bill seeks to clarify and establish the intent of the present legislation and established practices. It restores what everyone had understood to be the legal situation since 1985. The Debelle judgment is, in fact, putting some of the State's heritage under threat, and the Bill seeks to clarify

what everyone understood the Act to mean and what it is meant to mean at this time.

It is not retrospective legislation in the sense that that word is usually used. It clarifies what everyone thought the Heritage Act meant and restores it. Until the Debelle judgment everyone had understood the Heritage Act to mean what it will certainly mean after the passing of this Bill. In that sense, the word 'retrospective' as used by members opposite is a red herring, and it is a misuse of that word to attribute it to this Bill. This Bill is not introducing something new and applying it retrospectively; it is ensuring that what was understood to apply from 1985 has, in fact, applied since that time.

At the present time we do not believe it is appropriate to start addressing the question of appeal provisions. The new Act will certainly address this question when it is introduced in 1992, but it seems more appropriate to leave such matters to the new Act when it comes in, rather than trying to tack it on to the existing Act and what has applied since 1985.

Furthermore, the new appeal provisions which will be addressed in the new Act will be in keeping with the findings of the planning review, and it is premature to include now in this matter one system of appeal provisions and then provide quite different appeal provisions for planning matters following the findings of the planning review. It is certainly desirable, as I am sure all members would agree, that appeal provisions as a whole should be considered in the light of the planning review. In consequence, we believe that the appeal provisions which have been suggested in contributions by members are not appropriate at this time and raise an issue that is quite outside the intent of the present Bill.

The Hon. Mr Elliott raised a couple of questions in his contribution to which I would like to respond. First, he asked a number of questions regarding the Heritage Act review and the expected program for this matter. I understand that the final report is expected to be with the Minister either at the end of January or early February 1992. It is then hoped that, by the end of February next year, a green paper will be issued for public consultation and consideration. It is then hoped that the resulting Bill will be introduced into Parliament no later than the budget session of 1992. Certainly, the provision of compensation and assistance for affected owners is being considered as part of the new Act. The Hon. Mr Elliott can rest assured of that matter.

Secondly, the Hon. Mr Elliott raised the question of urgent conservation orders being issued after development approval had been granted as opposed to their being issued after development applications had been made. The urgent conservation order has always provided the Minister with the power to have a final say in development applications affecting any heritage item. An application that is considered carefully by a planning authority and a proper decision reached would probably result in revocation of an order, with each case being considered on its merits.

Under the new Act, the complete system of conservation orders will be overhauled. I also understand that the last clause of the Bill before us will make mandatory what in fact has been adopted in principle by this Government, that is, that urgent conservation orders are not issued after approval for development has been granted. This has been the principle on which the Government has operated even though it has not been mandatory until now but will become so under this legislation.

I would like to make one comment regarding the contribution from the Hon. Mr Davis where he took us for a walk along North Terrace and made various allegations that the Government had done nothing at all about our cultural boulevard. For his information, I would like *Hansard* to record for him that, in the life of the present Government, there have been major redevelopments or refurbishing of a very large part of the cultural institutions and other sites on the northern side of North Terrace. In case the honourable member cannot remember them, there was refurbishing of the Adelaide Railway Station and of the exterior of Parliament House. Considerable work was done at Government House and a great deal of work was undertaken for the Mortlock Library of South Australiana. I always understood the Hon. Mr Davis to be very enthused about what the Government had done in the Mortlock Library.

Major restorative work has been undertaken on the Mitchell Building of the University of Adelaide. Then, of course, as he mentioned, there are the facades which remain on North Terrace as part of the Remm-Myer development—as he mentioned, Shell House, Goldsborough House, the Liberal Club building and the Verco building. It is interesting that, in his theoretical walk along North Terrace, the honourable member completely left out the Institute building, which is currently being refurbished. It may be that he was not aware of what is going on, as the building is very largely hidden with scaffolding. However, the honourable member might well have suspected that something was occurring behind that scaffolding. In fact, this is a major refurbishment of the Institute building which will do a great deal indeed for the visual characteristics of North Terrace.

Other work is certainly going on regarding North Terrace as our cultural boulevard. Tourism South Australia and the Department of Environment and Planning, with the Department for the Arts and Cultural Heritage, are involved in a cultural heritage working party to seek further ways of enhancing the image of North Terrace as one of the heritage and cultural jewels of Australia. Our North Terrace boulevard has that reputation, and the Government is doing a great deal to ensure that it maintains that reputation. Indeed, as I have indicated, it has already done a considerable amount.

While the redevelopment of the Art Gallery by adding extensions to it has not yet commenced, it is well planned and ready to go. Furthermore, this planning has been done in such a way that the extensions will not affect the heritage facades along North Terrace.

They are designed to fit in very well with the general aesthetic merit of North Terrace and of the Art Gallery and will not intrude or in any way damage the heritage value of the northern side of North Terrace. I think the Hon. Mr Davis has either had his eyes shut for the past few years as to what is occurring along North Terrace or chooses to ignore completely the great deal that has been and is being achieved by this Government to enhance and maintain the value of North Terrace as our cultural boulevard.

The Hon. Peter Dunn: Tell us about it.

The Hon. ANNE LEVY: I just did; weren't you listening?

The Hon. Peter Dunn: Tell us again.

The Hon. ANNE LEVY: Tedious repetition is not allowed under Standing Orders.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Law governing proceedings under this Act.'

The Hon. DIANA LAIDLAW: I move:

Page 1—

Lines 25 and 26—Leave out 'has been made (whether before or after the commencement of this subsection)' and insert 'is made after the commencement of this subsection'.

Line 27—Leave out 'was' and insert 'is'.

This addresses the findings of the Supreme Court that the Adelaide City Council must have regard to the law at the time a planning application is made. Accordingly, the Supreme Court determined that the interim listing and the urgent conservation order that were applied to the Gawler Chambers building after application for development was lodged introduced new laws to which the council could not have regard in deciding the application. As the Minister noted in her second reading speech:

> As a result of this decision much of the State's heritage which has not yet been assessed and documented could be lost.

My colleagues and I agree with that assessment of the decision and we certainly support the move by the Government to redress that situation which, if allowed to unfold, would be quite intolerable and would not be accepted by any person in this place. However, we do not accept that, from the introduction or proclamation of this clause 4 (3), we should be addressing this Bill retrospectively. We believe that this important provision should apply from the date of proclamation of this Bill. I know that there was great agitation immediately after Justice Debelle came down with his finding that a whole raft of buildings may be knocked down by unscrupulous developers who are keen to take advantage of this situation. As we all know with the benefit of hindsight now, that has not happened and that advice has come from the Adelaide City Council, which has not received the applications that we first thought could arise because of that judgment.

So, the Liberal Party is very conscious that the retrospective aspect of this amendment is aimed directly at Gawler Chambers and the developers of that building, and on this occasion I will not go over all the history of this matter as I did at some length during the second reading debate. However, it is quite apparent that we need never have been in this situation today had the Government acted earlier on advice to heritage list this building or had it continued with its past determination that the building not be heritage listed. However, for years it has refused to heritage list this building. Three weeks ago after it got caught by the court and the Government itself attracted a great deal of public odium for vacillating on this issue, the Minister for Environment and Planning tried to redeem the situation and to heritage list the building. This has complicated the circumstances a little, but it does not justify bringing in this measure retrospectively.

I restate that the Liberal Party certainly supports clause 3 to ensure that what the Minister now says was the original intention of the Act passed in 1985 in respect of conservation orders will now be confirmed. I repeat: the original intention of the Act (and the Minister has pleaded that matter in summing up the second reading debate), does not matter a hoot after Supreme Court Justice Debelle came down and said that in terms of the letter of the law what the Government may have thought was the intention of the Act was not the intention. I want to make one more point. In summing up the second reading debate the Minister said:

> This Bill is not retrospective in the usual sense.

Again, I quote the Minister:

> It is simply to clarify what everybody thought was meant by the 1985 amendments.

I can assure the Committee that not everybody did think that. The Adelaide Development Company and its lawyers certainly did not think that, otherwise it would not have challenged this matter; certainly the planning office of the Adelaide City Council did not think that, otherwise it would not have approved the application to the council. I know that the Adelaide City Council vote was divided on this matter, but many people on the council did not think that. In terms of speaking to my amendment, I also ask the Minister what she means by 'everyone thought' that this was what was meant. Perhaps such casual language is one reason why we are in such trouble with our heritage and development laws in this State and why we have this most unfortunate piece of retrospective legislation in this place today.

The Hon. ANNE LEVY: The Government opposes the amendment. As I stated earlier, this is not a retrospective clause as retrospectivity is usually defined. I restate that the general community had understood that the amendments passed in 1985 meant that an urgent conservation order placed on a building prevented development, even if an application for development had already been made. That was the general community understanding. Whether certain individuals believed that or not or decided to hire smart lawyers to see whether or not a different interpretation could be made, it was certainly the generally accepted view that an urgent conservation order would prevent development, even if a development application had been made.

The honourable member suggested that the fact that a flood of applications was not made was proof that the fears expressed at the time of the Debelle judgment were groundless. My only response to that is that it was very soon after the judgment that the Government announced that it would bring in legislation to return to the situation that a vast number of people, if not every single individual in South Australia, thought had applied from 1985 on. As a result, this would clearly inhibit people from making such applications, as they had been forewarned that legislation would prevent such applications being successful.

The Hon. K.T. GRIFFIN: I take exception to the reference by the Minister to 'smart lawyers' in the way in which she said it. She is denigrating them. The role of the lawyer is to give advice on the law as that lawyer believes it to be.

Members interjecting:

The Hon. K.T. GRIFFIN: We do not necessarily have smart lawyers—we had a smart judge and the smart judge made the decision that the law was what the so-called smart lawyers believed it to be. That happened to differ perhaps retrospectively from the view of the Government, which found itself in an embarrassing position because it had done nothing about this building for years and then all of a sudden there is an uproar after Justice Debelle makes his judgment.

As I said in my second reading speech, we either have an independent judiciary making judgments on the law as it is passed by Parliament or we do away with the courts and just let Ministers run this country, and heaven help us if we had that situation—we would be all over the place.

The Hon. R.J. Ritson: That's the way they would like it.

The Hon. K.T. GRIFFIN: They may like it that way but the amount of legislation which the Government has passed to overturn judgments of the court is such that it believes it has all the wisdom and no-one else has any, and it denies the basic constitutional position that the court makes the judgment.

If the legislation is not what the Government wants it to be or believes it to be, then it brings in legislation to prospectively—not retrospectively—change it, and the problem with this is (as I said in my second reading speech) not so much the fact that it may operate some time in the future after the Bill is passed, but the fact that it goes backwards, so that people who believed that they had certain rights now find that, if this Bill is passed, they do not have the rights. It is as simple as that. It is only another form of expropriation.

The Hon. M.J. ELLIOTT: People like to paint things in black and white because it makes them easier to argue. The positions are not as black and white as some people try to present them. True, since 1985 when the Act took this form in relation to this provision, the section has been interpreted, not by the courts, but on a number of occasions in exactly the way the Government's amendment suggests.

The Hon. K.T. Griffin: Who interpreted it that way—the Government?

The Hon. M.J. ELLIOTT: That is right. My point is that it has been an accepted form since that time in many ways. Not only did people believe it to be the case at the time of the legislation but it has been in force for six years in that way and there have been a number of cases where the interpretation has been that way.

I do not believe that the Government set about acting out of bad faith in this matter; they have consistently been making interpretation in this way. I must confess that I am worried by the number of pieces of legislation that we have at the moment reacting to court decisions. We have quite a few of them. It must indicate that there are several possibilities, one of which is that drafting has deteriorated over recent years. That is one possibility. Another possibility is that there is an increasing tendency to litigate, because I think there is a lesson that some people are learning that, if you have the money and are willing to go hard enough and explore all the loopholes, you eventually find one, and I think that is eventually what happened in the water rates case. That was a classic example of where a case ended up being picked up on a technicality.

The fact is that, if you are willing to go to court and spend enough money on a smart lawyer (it is not a matter of a lawyer being crooked or anything else), he is paid by the client to do the job and, having been paid to do that job, he will find something. Arguments are constructed, and the fact is that judges have a very interesting role in the system of interpreting the law. I sometimes wonder whether judges are careful enough about their interpretations of the law. Laws are meant to be made by Parliament and interpreted by the courts, but the courts must be very careful in their interpretation and a very fine line is walked in that process.

Nevertheless, in this case I believe the intention of the law was well and truly understood. Somebody chose to dispute it, and a ruling has been made which is contrary to the clear understanding that I believe almost everybody had. We cannot say that everybody had that understanding, but I think most reasonable people believed that was the way it operated. Look at what is happening at this stage—after all, the Government proposal is essentially that, as long as the order has been put in between application and approval, it is in order. Now, the fact is that they have not been granted approval in any case so, even in that sense, I believe the Government is really acting consistently with the sort of law which it is trying to bring in.

It is not as though approval has been given and they are setting about overturning it. They have come into the process in the same way in which the law was intended to be in the long run, which is between application and approval, and it is still in that form at present. Therefore, I think that, in both senses, and in terms of common understanding and of where they are coming in, I do not believe that the real application of this is a problem.

The only problem is that which everybody has who is denied the chance to develop. I have already said previously in this place that that is a problem which must be resolved. The problem that I see is not significantly a problem of retrospectivity in this case. I think the significant problem the ADC has is that it may be facing a denial of opportunity to develop, and that may have a cost, and something must be done about that.

The Hon. DIANA LAIDLAW: I would say that some of the statements just made by the Hon. Mr Elliott are statements that he would not care to make outside this place. Well, perhaps he should and then just see what the smart lawyers will do with him then, because I would think he would be absolute mincemeat, and he would deserve to be. That contribution is incredible in terms of the suggestion of an increase in litigation. It is a fundamental right in our democracy that people can take matters to court when they feel aggrieved, and I am not sure if the Hon. Mr Elliott is suggesting that that right should be removed and that we should leave to public servants the interpretation of laws that we pass in this place, and that they should not be subject to checks and balances.

In fact, if I had my way (and, hopefully, in the Liberal Government I will), there will be more and more checks and balances and accountability on the administrative decisions made within the Public Service in this State. I return to the point that the Minister said two or three times right from the outset that 'everybody thought'. Now, she has changed her tune and is saying that it was 'the general community understood'. Well, these clauses relate to the City of Adelaide Development Control Act, and the planning officers and senior planning adviser in the Adelaide City Council did not 'generally interpret' or 'always think', and the advice was never on the same basis that the Minister now claims everybody else understood it was on—that this conservation order issue should apply.

We have this retrospective legislation, which the Minister says is not really retrospective, because it does not meet with how she wishes to manipulate the situation at the time. We now have the Hon. Mr Elliott suggesting that people should not have the right to litigate and that, if they do, it is all right to litigate if you have money, but it is not all right if you do not; and sometimes it is okay, and sometimes it is not. Our system has operated and has been held in great respect in this country because we have upheld the letter and the spirit of the law.

We are now overturning that, by this Government repeatedly bringing in retrospective legislation which the Hon. Mr Elliott himself has acknowledged is not a trend that he likes but on every occasion has endorsed. I remind the member of that. He has endorsed every one of these Bills that he does not like. We then not only find that we have this increasing spate of retrospective legislation, but also we now have the Hon. Mr Elliott reflecting on the basic rights of everybody in this community to appeal to a court. The courts not only determine justice, but also they have always been seen as an important check and balance in our system, and long may they remain so.

The Hon. K.T. GRIFFIN: I want to respond to several points that the Hon. Mr Elliott made. He suggested that perhaps the problem is poor drafting. I would not agree with that. It may be that there are difficulties in drafting legislation from time to time, and I have just been through some very great difficulties with the self-defence legislation as well as trying to appreciate the significance of the law. It is difficult, but one of the difficulties that arises is that, if legislation is brought into the Parliament without adequate consultation, the prospect is that there will be issues that are not properly addressed by people who have experience, whether lay people or legally trained people in the area of law, which is the subject of the legislation.

If amendments must be made on the run, there is even more likely to be a possibility of a problem. We cannot

blame the drafting for that. All that we can do is place the responsibility upon the Minister, ultimately, and the Minister's advisers, and also blame the lack of adequate consultation which, in many instances, will have resolved particular conflicts, omissions or other difficulties. The Hon. Mr Elliott says that there may be an increasing tendency to litigate. I do not think the statistics bear that out, particularly in the planning area, but if they did, I would suggest that one of the reasons is that there is a greater level of uncertainty in the whole planning process.

The Hon. M.J. Elliott: That is why the Act needs rewriting.

The Hon. K.T. GRIFFIN: Yes, but that is not the issue now. There is a great deal more uncertainty. There may be lengthy delays involved in the various stages of the administrative process and, above all, there may be more at risk. No one can blame anybody, whether it be the local householder or the big corporation, for wanting to ensure that his or her or its rights are adequately explored and recognised. If there is an area of the law on which there is disagreement as to interpretation, ultimately the matter has to be sorted out in the courts. Whether it is a big corporation or a small local home owner, there ought to be that right.

The other point to which the honourable member referred was that judges have to be more careful in their interpretation of the law, suggesting that perhaps the judges are not as careful as they ought to be. It may be that judges are wrong. They are fallible. They try to make their judgments based on the law as it is, established by precedent or by statute and, in some respects, commonsense, but they are fallible. That is why we have an appeal process. The appeal process will often sort out the incorrect judgments of perhaps a judge at first instance. In some cases they will go to the High Court, which is the final court of appeal in Australia and the final arbiter of disputes between citizens and Governments.

In this case, the Government did not go to appeal. It has chosen instead to try to deal with the problem legislatively. If the honourable member or the Minister is suggesting that Mr Justice Debelle's decision is wrong, the proper course is to go on appeal and have it resolved in a higher court. I remind the honourable member also that in this case the Minister withdrew from the case before Mr Justice Debelle and took no part in presenting a position on the law, whether it be the position that the Hon. Mr Elliott is espousing or the Government is espousing or any other position. The Government removed itself from the jurisdiction. Therefore, it cannot after the event complain about the decision if it did not play a part in presenting submissions and arguments to the court. More importantly, the Minister agreed by letter through the Crown Solicitor to abide by the decision of the court.

The Hon. Diana Laidlaw: And to pay the legal costs.

The Hon. K.T. GRIFFIN: And to pay the legal costs. There was a settlement of legal costs. Now the Minister says, 'It was all right to say that in August, or whenever it was, but I have changed my mind. There has been a bit of public pressure. I am too weak to stand up and be counted. I am going to move in the Parliament to override that decision. I am going to renege on the word which I gave previously.' I think that is an untenable position for any community to be in, and particularly for any litigant.

The Committee divided on the amendment:

Ayes (10)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin, J.C. Irwin, Diana Laidlaw (teller), 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 (teller), Carolyn Pickles, R.R. Roberts, T.G. Roberts, C.J. Sumner, G. Weatherill and Barbara Wiese.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clause 5—'Amendment of section 57—Law governing proceedings under this Act.'

The Hon. DIANA LAIDLAW: I move:

Page 2—

Lines 11 and 12—Leave out 'has been made (whether before or after the commencement of this subsection)' and insert 'is made after the commencement of this subsection'.

Line 13—Leave out 'was' and insert 'is'.

I will not speak to these amendments as the arguments were canvassed in speaking to the amendments to clause 4.

Amendment negatived; clause passed.

New clause 5a—'Review of decisions of Minister.'

The Hon. DIANA LAIDLAW: I move:

Page 2, after line 23—Insert new clause as follows:

Insertion of Part IIA

5a. The following Part is inserted after section 16 of the principal Act:

PART IIIAA

REVIEW OF DECISIONS OF MINISTER

16aa. (1) Application may be made to the Planning Appeal Tribunal for a review of a decision of the Minister—

(a) to enter an Item in, or remove an Item from, the Register;

or

(b) to designate, or revoke the designation of, an area as a State Heritage Area.

(2) Any of the following persons may apply for a review, or be joined as a party to the proceedings on a review, under this section:

(a) a person who owns the whole or part of the Item or Area to which the review relates;

(b) a municipal or district council within whose municipality or district the whole or part of the Item or Area is situated;

(c) any other person who has to the satisfaction of the Tribunal a sufficient interest in the matter.

(3) an application for review under this section must be made within three months of the date of publication in the *Gazette* of the public notice effecting or notifying the decision to be reviewed.

(4) The Tribunal may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that an application for review be made within the period fixed by this section.

(5) The Tribunal may, on a review under this section, do one or more of the following, according to the nature of the case:

(a) confirm, reverse or vary the decision subject to review;

(b) remit the subject matter of the review to the Minister for further consideration;

(c) make any further or other order as to costs or any other matter that the case requires.

(6) Without limiting the powers of the Tribunal, the Tribunal may, if it thinks fit, order that an application for review under this section be heard together with any other proceedings before the tribunal relating to the whole or part of the Item or Area the subject of the application.

This new clause relates to the appeal powers or the powers to review a decision by the Minister to place an item on or to remove an item from the register. It seems extraordinary to the Liberal Party and most people who have looked at the placing on or removing of items from the register that there has never been an appeal provision, so whatever the Minister determines, according to a vague set of criteria, remains without right of appeal.

I know that this matter has been canvassed for some years, but we have seen no action by the Government to provide what we see as a very basic appeal right in this matter. Certainly, in most planning areas, we have seen third party appeal provisions being accepted generally. However, we believe it is absolutely critical that if appeals are allowed at an early stage for third party involvement in planning decisions, we should be providing a right of appeal

or review for heritage listing. In arguing that most strenuously, I refer to an item in yesterday's *Advertiser* which highlighted the enormous drop in property value of items that are heritage listed. As the law stands at present, and without incentive—let alone compensation—one would think that if this area of heritage listing was to have any respect in our community, and certainly any respect amongst property holders who might—by chance, or because of a wish—own a heritage property, we must provide such a basic right of appeal. I know it is one of the matters that has been canvassed vigorously in discussions on the review of this heritage legislation, as have issues of compensation, which I believe should have been incorporated in the Bill—in respect of the owner of the Gawler Chambers. However, that is another matter for another day.

We believe that we should be using this opportunity to provide these basic appeal rights. I know that during her second reading explanation the Minister indicated that the new Act will address this matter. I think that, if it is good enough for the new Act to address this matter in a year, it is good enough for us to address it now, because one would hope that many more items will be added to the heritage list in the forthcoming year—particularly, because of the added interest of the Adelaide City Council in townscapes and a number of other items that it is keen to add to the list. Knowing the Adelaide City Council's enthusiasm and the probable change of direction as a result of a by-election for an alderman in the near future, I think it is critical that we anticipate those matters and at this stage provide this power and right of review.

I do not consider that that would be premature in terms of the new Act. We should look at that matter when the new Act is finally introduced. I suspect that the debate will not be completed until September or October, and that it will be December before it is finally proclaimed and the regulations are drawn up. So, we have at least a year before that Act comes into place. We also have a year, as the Hon. Mr Elliott would know, during which it will be critical for heritage matters in this State, with such activity being generated from Adelaide City Council alone.

The Hon. ANNE LEVY: The Government opposes this amendment. As I indicated earlier, there will be appeal provisions in the new Bill when it is introduced next year. Such appeal provisions will obviously take account of the planning review. It would be absurd to have different appeal provisions for different situations. The planning review will obviously lead to consideration of this whole issue. The amendment before us is really legislation on the run. This is not a fully considered measure. There has been no attempt to address how it integrates with other procedures, planning or development matters. Legislation on the run like this is not desirable and it leads to legislative confusion and the—

The Hon. Diana Laidlaw interjecting:

The ACTING CHAIRMAN (Hon. G. Weatherill): Order, please! The Minister has the floor.

The Hon. ANNE LEVY: It is common in Committee for members not to interject, as they have the right to speak as many times as they wish.

Members interjecting:

The ACTING CHAIRMAN: Order!

The Hon. ANNE LEVY: There is nothing to prevent members making their contribution as often as they wish in Committee. There are not the same rules as those which apply during the second reading or third reading stages of debate. I know that the honourable member finds it very difficult to control herself. I realise that. However, I hope that she will try in this situation to behave with the decorum that is expected in this Chamber. I repeat: I oppose the amendment.

The Hon. M.J. ELLIOTT: I must say that I find the amendment attractive on first viewing. My first viewing of it was about two and a half hours ago, when I was approached by the honourable member and asked to consider supporting it. I find it attractive, but I do not think I have had sufficient opportunity to think through its ramifications. I believe that with a rewrite—and hoping that we will see a draft of the new legislation within a couple of months or, at least, an indication of the shape of the legislation within that timeframe. I am loath to support something that I have not thought through completely. In those circumstances, I will not support the amendment, although I expect that—

Members interjecting:

The ACTING CHAIRMAN: Order!

The Hon. M.J. ELLIOTT: —I would support some form of appeal mechanism when we debate the rewrite of the legislation next year.

The Hon. DIANA LAIDLAW: I will not deign to reply to the Minister, because I think her contribution is unworthy of a Minister, let alone a Government representative, in arguing against appeal rights. If that is the advice she is receiving on such matters, no wonder we are in trouble with our planning and heritage laws in this State. I am disappointed with the Hon. Mr Elliott. It is true that I showed him the amendment only a little time ago. I thought that because it was an issue of basic rights he would see fit to support it. It is so important, with this flood of matters that one would hope would be addressed in the heritage listing area in the next year, that we provide people with this basic right during a period when we are not sure at all when the planning review, let alone the heritage review, will be completed. As I said, I am disappointed. However, I indicate that the Opposition will call for a division on this matter.

The Hon. ANNE LEVY: I must again intervene to indicate that I have been misquoted. There is no way that the Government has said that it is opposed to appeal procedures. In fact, many appeal procedures, or their equivalent, are available now.

The Hon. Diana Laidlaw: But not for heritage listing.

The Hon. ANNE LEVY: She can't control herself, can she, Mr Chair?

The ACTING CHAIRMAN: Order!

The Hon. ANNE LEVY: As the honourable member knows, 1 600 townscape buildings are currently being considered by the city council. It is a question not of these buildings being included on the heritage list but of the requirement for a change to the City of Adelaide Development Plan.

Procedures for objection exist at the moment for any item which would require a change to the City of Adelaide plan. It is not true to say that appeal provisions do not exist at the moment. I really wish to correct the implication being made by the honourable member that we are not interested in appeal mechanisms.

The Committee divided on the new clause:

Ayes (10)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin, J.C. Irwin, Diana Laidlaw (teller), 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 (teller), Carolyn Pickles, R.R. Roberts, T.G. Roberts, C.J. Sumner, G. Weatherill and Barbara Wiese.

Majority of 1 for the Noes.

New clause thus negatived.

Clause 6 and title passed.

Bill reported without amendment; Committee's report adopted.

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

That this Bill be now read a third time.

The Hon. DIANA LAIDLAW: Very briefly, looking at the hour and acknowledging that this is the last day of the session and there is a lot more legislative work to do, I want to indicate, as one who has consistently opposed retrospective legislation introduced by the Minister for Environment and Planning, how bitterly disappointed I am to see the Bill pass in this form. I believe there are important features in this Bill that redress the impact of the decision by Justice Debelle, but we believe that those matters should be addressed from the day that this Bill is proclaimed. Members of all persuasions in this place have worked hard to address as a matter of urgency this legislation.

I do not believe that it should be retrospective and, if the Government had agreed to pay the costs for the Adelaide Development Company in relation to the Supreme Court action before Justice Debelle, I believe it certainly should be paying the costs to that company as a result of this retrospective legislation.

I say as a plea on the last day of this session that, when we return next year, we will see the Minister for Environment and Planning, on behalf of this Government, not getting herself into a position where she believes she must introduce retrospective legislation almost *ad nauseam* month after month, because I think that the Parliament will not withstand much more of it. I do not believe that, if we are to generate any real credibility in our heritage laws in this State, the Minister's actions in this matter can be tolerated, because I do not think the community will tolerate it.

The Council divided on the third reading:

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

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

Pair—Aye—The Hon. T. Crothers. No—The Hon. Peter Dunn.

Majority of 1 for the Ayes.

Third reading thus carried.

Bill passed.

CRIMINAL LAW CONSOLIDATION (SELF-DEFENCE) AMENDMENT BILL

In Committee.

Clause 1 passed.

Clause 2—'Substitution of s.15.'

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

Page 1, lines 19 and 20—Leave out 'has a genuine belief that the force is reasonably necessary to defend himself, herself or another' and insert—

'believes that the force is immediately necessary and reasonable—

(i) to defend himself, herself or another;

or

(ii) to prevent or terminate the unlawful imprisonment of himself, herself or another;'.

I want to make a few preliminary remarks about this Bill. The whole issue of self-defence, as I indicated during the course of my second reading contribution quite some time ago now, is particularly complex and difficult. There is no doubt that many people in the community would like to know precisely what the law is, because they feel that it is not clear and that they may be in a position where, if they seek to defend themselves, they may themselves be prosecuted for the harm that might be caused to a person who might be threatening them, their property or some other person. I can understand that concern but, whether or not the common law is presently clear, the fact is that it is not enunciated in a form which lay people might readily come to terms with and might easily understand. Perhaps that is a feature of the common law as a whole, not just the law in relation to self-defence.

I suppose the difficulty is that, when one tries in a sense to codify a defence in the criminal law, one really has to be sure that all the elements of the defence are properly reflected in the codification. That is not easy. Mr Groom, who first introduced a Bill into the House of Assembly, has a Bill which has largely been adopted by the Government and which is now before us. I suspect the Government was involved in assisting Mr Groom to prepare the Bill which he originally introduced as a private member's Bill. That Bill has been criticised by lawyers practising in the criminal jurisdiction as well as by the Law Society criminal law committee and also by former judge, now Mr Andrew Wells, QC. Mr Wells is a former Supreme Court judge who is renowned for the clarity of his expression and his writing and who believes that there was no reason to tamper with the common law, that it was perfectly clear, at least in the context of a judge giving a summing up to a jury of lay people, and that, rather than seeking to codify the defence, we ought now to drop the proposition and allow the common law to prevail.

I suppose there is some attraction in that, particularly because of the complexity of the issue, but the matter having been through a select committee, the House of Assembly and now here, the Liberal Party is of the view that that is not achievable and that some attempt has to be made to find common ground on a proper expression of the defence in a codification. Whilst we should be conscious of the need to make the expression of the defence as clear as possible in as simple terms as possible, we always must have in view that, at the end of the day, a person who is charged, say, with murder, will appear in a court and the defence must be intelligible first to the judge who will have to direct the jury and then to the jury. It is important that, if simplicity of expression is compromised by the need to ensure clarity for the trial judge, that must be the priority.

I said in the course of the second reading debate that the Liberal Party and I thought there may be some value in the Attorney-General's convening a group which included Mr Wells, Parliamentary Counsel, the Attorney's own advisers, the Opposition and maybe the Law Society with a view to trying to work through the principles and issues. That ultimately did not occur.

Several weeks ago it was clear that Mr Groom was trying to stir the pot in relation to this Bill and, as a result, I have had to spend a great deal of time in between all the other Bills that we have had before us, to consider this issue. In fact, Mr Groom was quite mischievous in suggesting that it was being deliberately held up in the Council, particularly by me. I refute that.

The Hon. C.J. Sumner: It wasn't being held up by me.

The Hon. K.T. GRIFFIN: We agreed that it would be dealt with, if at all possible, before Christmas but not necessarily if we found it was impossible to do so. That was the position that we agreed. I thought that that was a discussion that would not need to be raised—

The Hon. C.J. Sumner: I'm just making the point that it was not delayed by me.

The Hon. K.T. GRIFFIN: I am not saying it was held up by the Attorney: I said that was an understanding. Let me say that I have appreciated that the Attorney-General has made available his officers to enable me to have discussions with them. I have appreciated the officers' assistance. Similarly, I have appreciated the assistance of Mr Hackett-Jones, Parliamaentary Counsel, in trying to reach some final position on this Bill.

Broadly speaking, the amendments are designed to reflect what I believe to be the law in Beckford's case, which is a Privy Council decision in 1988, where it was decided that a person could take advantage of the defence if that person had a belief, even if it was a mistaken belief, that force was necessary to defend himself, herself or another or to defend property, but that the force had to be what was ultimately determined to be reasonable and certainly not grossly unreasonable.

The difficulty I found with the Bill was that it sought to qualify 'belief' by referring to a genuine belief; it sought to qualify 'the force' so that the force was reasonably necessary; and it seemed to me that that tended to make the test whether or not the defence was applicable partially a subjective test and partially an objective test.

It may be that there is an element of that even in my amendments, but the position we are trying to get to is that, if a person is threatened or attacked, that person believes that he or she is under threat and must take action to defend himself or herself. In fact, if there is not an attack but the belief is mistaken, then that does not alter the entitlement of the person to rely upon a belief in resisting what was believed to be a threat. Then to use force, that force might be such as the person believed was necessary to defend himself or herself.

There are some safeguards in relation to property that were included in the original Bill and are now in the Government's Bill where a person is seeking to protect property but they cannot do so with the intention to kill someone. The Bill says also that they should not have the intention to commit grievous bodily harm. I would suggest that that is not part of the law at present, but I accepted that at least in relation to death there should be a decision that in defending property the person should not be able to avail themselves of the defence where there was intention to cause death. I do not accept that an intention to commit grievous bodily harm in protecting property falls into the same category. My amendments will seek to reflect that position and also to reflect the position that, if the force is grossly unreasonable, the person may not be convicted of murder but may, if he or she acted with criminal negligence, be convicted of manslaughter. That picks up all the ingredients of the crime of manslaughter. Within the amendments, as I propose them, there is a structure that takes into account the circumstances where a person is reckless, as to whether death is caused, where there is criminal negligence or where the force is grossly unreasonable. That accords more appropriately with the existing law than does the Bill.

The only other matter to which I wish to refer is that there was no definition of 'criminal trespass' in the Bill and it seemed to me that that was appropriate and so the definition is that criminal trespass exists where a person trespasses on land or premises, with the intention of committing an offence against the person or an offence against property or both, or in circumstances where the trespass itself constitutes an offence, and that picks up the provisions of section 17 and subsequent sections of the Summary Offences Act relating to trespass on land and squatters and how one might get rid of them.

The Hon. C.J. SUMNER: I should say at the outset that there is not any difference that I can discern between the Government's position and that of the Opposition so far as the broad policy is concerned. The broard policy was adequately explored by the select committee of the Lower House at some considerable length, and it is essentially the policy position that emerged from that committee which was incorporated into the Bill that the Government introduced.

I do not think there is any disagreement from the Opposition on that policy position, which is outlined in the second reading speeches. The difference, insofar as there is one, is about how to translate that policy position into legislation, into what will amount to a code for self-defence in the criminal law. Basically, with that in mind, I indicate that the Government is prepared to accept the bulk of the amendments moved by the Hon. Mr Griffin. There are principally two issues on which we differ to some extent, and these are covered in my amendments. Accordingly, I move:

Page 1—

Lines 19 and 20—Words to be inserted: before 'believes' insert 'genuinely'; leave out 'immediately'.

As I say, we have no objection to the essential structure of the amendments moved by the Hon. Mr Griffin. We seek to insert 'genuinely' before 'believes', 'believing' or 'believed' on four occasions. There are three reasons for moving those amendments: first, the word emphasises the thrust of one of the major objectives of the recommendations of the select committee, accepted in both the Bill and the Hon. Mr Griffin's amendment, that is, that the test to be applied is to be by reference to the actual, honest, and genuine belief of the person using the force. This is a significant reform, and it deserves to be emphasised.

Secondly, while it may be argued that a belief is a belief is a belief, and that the word 'genuine' is legally redundant, it is worth pointing out that lawyers are not the only consumers of this document. Indeed, as the Hon. Mr Griffin pointed out, there is a feeling in the public that the law relating to self-defence should be more readily accessible and its codification, with which we are now involved, will make it more accessible.

As the select committee found and made clear, the content of the law on self-defence and defence of property was of considerable concern to a large number of ordinary citizens who wanted to know what were their rights. This Act will be read by a large number of non-lawyers. Adding the word 'genuinely' will draw their attention to the nature of the test, using an adjective with which they are familiar. I think it is also worth pointing out that there are in legal judgments—and I believe also in statutes—circumstances in which the word 'belief' has attached to it an adjective. Certainly the words 'genuine belief' appear in court judgments. The words 'honest belief' are also used in judgments and, although I do not have immediate reference to them, I think words of that kind appear in some statutes.

Therefore, if one takes a strict view of the honourable member's position, there is no word which can describe a belief—a belief is a belief is a belief. However, that is not the position that is taken in some legal judgments and, I believe, in some statutes, where the words 'genuine and honest' are used to describe the belief. Accordingly, it is reasonable in this Bill to try to emphasise what we are attempting to do, by inserting the word 'genuine' before the word 'belief'.

The third point is that it is of some legal consequence to emphasise that the honest belief must be actually and honestly held. After all, the belief of the accused is on the test to be adopted, the key and the cornerstone of culpability.

We believe it is worthwhile to remind juries and lay persons that a person who uses force—perhaps lethal force—against another must really believe that it is necessary and reasonable to do so. It is still the belief of the self-defender who may be accused that we are referring to. That of course was one of the principal issues dealt with by the select committee; that is, it is not a belief by reference to some objective test, but is the belief of the individual at the time, a subjective test, to which we are referring. However, the use of the word 'genuine' before the word 'belief' emphasises that it must be just that—a genuine belief, and I suppose that one can say that, just like the use of the words 'honest belief' in other circumstances, that word emphasises what we are talking about.

The second objective of my amendment of the Hon. Mr Griffin's amendments is to remove out the word 'immediately' where it appears, on three occasions, because it may, on occasion, be too restrictive. While in perhaps most cases the reaction in self defence will be and should be immediate, that need not be so. To require it as a matter of law, as opposed to letting a jury decide on the facts of the case, would be too harsh. For example, using force to terminate unlawful imprisonment may be justified at any time during the course of that unlawful imprisonment. So, too, a person who is acting through fear of their life or safety may initially be paralysed by their fear and the situation and only react later. In such cases it should be for the jury to decide what is right. Putting in the word 'immediately' elevates that standard to a rule of law. Removing the word makes the question one to be resolved on the facts of the individual case. In the Government's view, that is the appropriate course of action.

The other amendment which is part of the package is not related to the two points that I have just mentioned. I am seeking to insert the word 'grievous' before the words 'bodily harm'. These are words which have been left out. The amendment corrects a typographical error.

The debate is narrowed down to whether the word 'genuinely' should be placed before the words 'believe', 'believed' and 'believing' wherever they appear to describe the belief that is necessary, and the removal of the word 'immediately' which appears in the honourable member's amendment. I do not think there is a policy difference. I think it is a matter of drafting and of trying to get the correct intention. We believe that our proposals to amend the honourable member's amendment achieve that policy objective as the select committee determined it should be and as the House of Assembly agreed.

The Hon. K.T. GRIFFIN: I can deal with the word 'immediately' fairly quickly. It does not concern me that that should be omitted. I agree that that gives the jury more flexibility. I suggested that it ought to be in my amendment only because in the United Kingdom Law Commission draft there is a reference to 'immediately necessary and reasonable', so there is a direct relationship between the force threatened and the force used. However, I am quite comfortable with the deletion of the word 'immediately'.

I oppose the insertion of the word 'genuinely'. I think it tends to suggest a qualification to belief. I disagree with the Attorney-General that it gives a clearer signal to lay people who are reading it as to what is intended. I think that may only tend to confuse the issue rather than enlighten those who might be reading it. I should have thought that the word 'genuine' at least tends to suggest that more objectivity might be brought into the description of 'belief'. My view is that if a person has a belief—even if it is a mistaken belief—he is entitled to rely upon it; but it is for the jury to judge whether the person held that belief, whether that belief was mistaken or whether someone is pretending that they had the belief but in fact did not.

I draw attention to several draft codes. The New Zealand draft Crimes Bill refers only to 'believes'. It is not qualified by 'genuine'. The United Kingdom Law Commission draft code refers to 'believes'. It is not qualified by 'genuine'. The draft code attached to the Gibbs Committee interim report refers to 'believed'. In none of those three modern draft criminal codes is there a reference to 'genuine'. Although it may complicate things, I think that we should leave it at 'belief' and then it is a decision for the jury.

The Hon. I. GILFILLAN: I am not in favour of inserting 'genuinely' as proposed in the amendments of the Attorney-General to the amendments of the Hon. Mr Griffin. I could spend some time reading the dictionary versions of 'belief' and 'believe'. None of those descriptions in the *Concise Oxford Dictionary* encourages me to accept an adjective to belief such as 'genuine' or an adverb such as 'genuinely' to believes, because there is no opposite. The very interpretation of the word 'belief' by its essence means it must be genuine. If it is not genuine, it no longer stands as a belief. I can understand that there is possibly a dilemma in making sure that the legislation is clear that the opinion that the person holds is strongly held, not just a passing fancy, and such words as 'a firm conviction' or 'belief beyond reasonable doubt' are uses of the language which I understand as being logical. Quite frankly, I do not believe that the legislation is improved any more by just leaving it as it is worded in that context in the amendments moved by the Hon. Mr Griffin.

The Hon. C.J. Sumner: 'Genuine' was always in the Bill. It has been in the Bill all the way through.

The Hon. I. GILFILLAN: I have had nothing to do with the Bill. The Bill has just sort of scampered through—

The Hon. C.J. Sumner: I am not trying to put the word 'genuine' into the Bill. I want to explain that I am not trying to put it in now at the last minute.

The Hon. I. GILFILLAN: The Attorney is protesting as if he were a smidgen uncomfortable about the word himself. I am not attributing the word—

The Hon. C.J. Sumner: I am not cross with you. I just want to clarify the situation.

The Hon. I. GILFILLAN: The word 'genuine' or 'genuinely' is bouncing like a tennis ball on and off the wall of this legislation, but I want to make sure that it stays off. Whatever else, our job is to make sure that legislation comes as near as possible to proper use of English and is as intelligible as is humanly possible to people who read the English language. I do not see any reason to justify what I see as a misuse of the word 'genuinely' coupled with the word 'belief' *(a)* because it is in the Bill, *(b)* because there is some impatience to get it through or *(c)* because there is some conception that it adds a qualifying factor which will save lives and injury down the track. I think that all those reasons fail to justify putting the word 'genuinely' into the Bill, and I oppose it. I do not have any problem with 'immediately'.

The Hon. C.J. SUMNER: I should like to correct what the Hon. Mr Gilfillan might have thought. I am not now trying to insert the word 'genuine' into the Bill that was discussed by the select committee and introduced into the Parliament. The words 'genuine belief' were in the Bill that was introduced by the Government in the Lower House and in the Bill that was introduced into this Chamber. I am now only moving the insertion of the word 'genuine' because we have basically accepted the Hon. Mr Griffin's amendment and, as a matter of drafting, his amendment took out the word 'genuine'. As we have accepted his basic

structure, we now have to put it back in order to get back to where we were on the nature of the belief that was in the Bill when it was introduced. In case the honourable member was under the misapprehension that this is a last minute effort by the Government to insert the word 'genuine' in relation to belief, I want to make clear to him that the words 'genuine belief' have been in the legislation from its first consideration by the select committee.

It was a recommendation of the select committee in another place that that should be the test. I want to clarify that. I note the honourable member's comments, but I cannot take it much further. He said that we should not have 'genuine belief' because it might confuse. The select committee and its Chairman, Mr Groom, who has had a lot to do with this Bill and has been involved in the select committee consideration and a number of public fora, believe that the use of the word 'genuine' before 'belief' emphasises what we are trying to do and makes it more readily intelligible to the community.

The Hon. J.C. BURDETT: In the first place, it is fairly obvious that everyone in this Chamber who has expressed any opinion feels pretty much the same way; I do not think there is any great argument. I do not agree with having the word 'genuine' before the word 'belief' because it seems to me—and I have looked at the dictionary as well—that one cannot have a non-genuine belief. The word 'belief' implies the sense that it is genuine.

The Hon. C.J. Sumner: Can you have a dishonest belief?

The Hon. J.C. BURDETT: No, I do not think one can either. I understood the Attorney when he spoke about that. As far as I am concerned, the word 'belief' says it all, and it cannot be non-genuine. It seems to me that the word 'genuine' adds nothing, and it can inject a qualifying element. We are talking about the public, but we also have to consider the courts, because they will ultimately interpret what we put into the Act. It seems to me that a court may say that the word 'genuine' must add something. If so, what does it add? That may be an element of confusion. It appears to me that the word 'belief' says it all, and I would object to the word 'genuine' before it.

The Hon. C.J. Sumner's amendment to the Hon. K.T. Griffin's anendment to page 1, line 19, negatived; the Hon. C.J. Sumner's amendment to the Hon. K.T. Griffin's amendment to page 1, line 20, carried; the Hon. K.T. Griffin's amendment, as amended, carried.

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

Page 1, lines 22 to 25—Leave out 'by using force, not amounting to the intentional or reckless infliction of death or bodily harm against another if that person has a genuine belief that the force is reasonably necessary, and substitute 'if that person, without intending to cause death or being reckless as to whether death is caused, uses force against another believing, that the force is immediately necessary and reasonable'.

The Hon. C.J. SUMNER: I move to amend the amendment, as follows:

Page 1, lines 22 to 25—
Words to be inserted—Leave out 'immediately'.

The amendment is to correct a typographical error.

The Hon. C.J. Sumner's amendment to the Hon. K.T. Griffin's amendment carried; the Hon. K.T. Griffin's amendment, as amended, carried.

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

Page 2, lines 1 to 6—Leave out this subsection and substitute:
(2) Where—
(a) a person causes death by using force against another believing that the force is necessary and reasonable for a purpose stated in subsection (1):
(b) that person's belief as to the nature or extent of the necessary force is grossly unreasonable (judged by reference to the circumstances as he or she believed them to be);
and
(c) that person, if acting for a purpose stated in subsection (1) *(b)*, does not intend to cause death and is not reckless as to whether death is caused.

that person may not be convicted of murder but may if he or she acted with criminal negligence be convicted of manslaughter.

Amendment carried.

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

Page 2, lines 8 to 11—Leave out paragraph *(a)* and the word 'and' following that paragraph.

This amendment is consequential.

Amendment carried.

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

Page 2, after line 14—Insert—
and
(c) a person commits a criminal trespass if that person trespasses on land or premises—
(i) with the intention of committing an offence against the person or an offence against property (or both);
or
(ii) in circumstances where the trespass itself constitutes an offence.

Amendment carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

DISTRICT COURT BILL

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

No. 1—Clause 43, page 12, line 30—Insert 'or witness' after 'legal practitioner'.

No. 2—Page 13, after line 23 insert clause as follows:

49. (1) The Registrar is responsible for the proper custody of money paid into the Court and securities delivered to the Court in connection with proceedings in the Court.

(2) The Treasurer guarantees the safekeeping of any such money or security from the time it comes into the Court's custody until it lawfully ceases to be in that custody.

(3) Any liability arising under the guarantee will be satisfied from the General Revenue of the State (which is appropriated to the necessary extent).

(4) Money paid into the Court may be invested in a manner authorised by the rules and any interest or accretions arising from the investment will be dealt with as prescribed by the rules.

(5) Any money in the Court's custody that has remained unclaimed for six years or more may be dealt with under the Unclaimed Moneys Act 1891.

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

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

There are two amendments. In relation to the first amendment to clause 43, page 12, line 30, clause 42 (5) provides that costs may be awarded against a witness who, without reasonable cause, fails to appear in answer to a witness summons. The amendment to clause 43 provides that a witness can appeal against any such order. That amendment is not of any major moment.

The second amendment relates to clause 49, which clause deals with the custody of litigants' funds and securities and is a money clause. The clause gives the Registrar responsibilities in relation to money paid into the court and securities delivered to the court in connection with proceedings in the court. It provides that the Treasurer guarantees the safekeeping of any such money or security, and enables the money to be invested and provides that the Unclaimed Moneys Act applies to the money in appropriate circumstances. The provision is based on similar provisions in the Supreme Court Act and spells out much more clearly than the provisions in the Local and District Criminal Courts Act who is responsible for money and securities and what is to be done with them.

The Hon. K.T. GRIFFIN: I indicate my support for the amendments. Although the Attorney-General said the first amendment was not of much consequence, with respect, it is of some consequence to the witness, who will have the right of appeal and that obviously is supported. The amendment to clause 49, the money clause, is appropriate and I support that, also.

Motion carried.

MAGISTRATES COURT BILL

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

No. 1—Clause 40, page 13, line 6—Insert 'or witness' after 'legal practitioner'.

No. 2—page 14, after line 31 insert clause as follows:

47. (1) The Registrar is responsible for the proper custody of money paid into the Court and securities delivered to the Court in connection with proceedings in the Court.

(2) The Treasurer guarantees the safekeeping of any such money or security from the time it comes into the Court's custody until it lawfully ceases to be in that custody.

(3) Any liability arising under the guarantee will be satisfied from the General Revenue of the State (which is appropriated to the necessary extent).

(4) Money paid into the Court may be invested in a manner authorised by the rules and any interest or accretions arising from the investment will be dealt with as prescribed by the rules.

(5) Any money in the Court's custody that has remained unclaimed from six years or more may be dealt with under the Unclaimed Moneys Act 1891.

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

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

These amendments are in the same terms as those that I have just explained in relation to the District Court Bill.

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

Motion carried.

STATUTES REPEAL AND AMENDMENT (COURTS) BILL

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

No. 1—Clause 17, page 6, line 17—Leave out 'categorised' and insert 'classified'.

No. 2—Clause 17, page 6, line 21—Leave out 'categorised' and insert 'classified'.

No. 3—Clause 17, page 6, line 25—Leave out 'categorised' and insert 'classified'.

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

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

Clause 17 was amended in the House of Assembly. There were drafting amendments to lines 17, 21 and 25. Each amendment substitutes the word 'classified' for the word 'categorised'. The amendment means that the offences are now classified as indictable, minor indictable or summary. On a review of the courts measure it was found that there were inconsistencies in terminology. This amendment ensures consistency.

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

Motion carried.

JUSTICES AMENDMENT BILL

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

No. 1—Clause 6, page 3, line 2—Insert 'from subsection (1)' after 'striking out'.

No. 2—Clause 8, page 5, line 6—Leave out 'designated' and insert 'classified'.

No. 3—Clause 8, page 5, line 15—Leave out 'characterised' and insert 'classified'.

No. 4—Clause 44, page 14, line 41 to page 15, line 4—Leave out subsection (4) and insert subsections as follows:

(4) Where a videotape or audiotape is filed in the Court, the prosecutor must—

(a) provide the defendant with a copy of the verified written transcript of the tape at least 14 days before the date appointed for the defendant's appearance to answer the charge, or, if the tape comes into the prosecutor's possession on a later date, as soon as practicable after the tape comes into the prosecutor's possession;

and

(b) inform the defendant of the defendant's right to have the tape played over to the defendant or his or her legal representative and propose a time and place for the tape to be played over.

(5) The time proposed for playing the tape must be at least 14 days before the date appointed for the defendant's appearance to answer the charge, or, if the tape comes into the prosecutor's possession at a later date, as soon as practicable after the tape comes into the prosecutor's possession, but the proposed time and place may be modified by agreement.

No. 5—Clause 44, page 17, lines 10 to 14—Leave out paragraphs *(a)* and insert paragraph as follows:

(a) evidence will be regarded as sufficient to put the defendant on trial for an offence if, in the opinion of the court, the evidence, if accepted, would prove every element of the offence;.

No. 6—Clause 44, page 19, line 18—Insert 'or the District Court' after 'Court'.

No. 7—Clause 48, page 22, after line 14—Insert new section as follows:

Regulations

192. The Governor may make regulations for the purposes of this Act.

The Hon. C.J. SUMNER: It might be more useful to deal with these sequentially, so I suggest we vote on them in order.

Amendments Nos 1 to 3:

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

That the House of Assembly's amendments Nos 1 to 3 be agreed to.

These are all drafting amendments.

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

Motion carried.

Amendment No. 4:

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

That the House of Assembly's amendment No. 4 be agreed to.

This amendment relates to the obligations to be imposed upon the prosecution in relation to the pre-hearing disclosure of material available to the prosecution in the form of audio or videotapes. New section 104 (4) provides that where the statement is in the form of a tape the defendant should be provided with a copy or a transcript of the tape. That part of the provision which refers to the production of a copy of the tape itself has caused a deal of concern.

The Victims Branch of the Police Department is of the view that it cannot guarantee to victims of crime, such as children, that a video tape of their police interview will not be made available to the accused and shown or otherwise revealed to their public humiliation. It takes the position that the provision will be inimical to the interests of victims and an obstacle to the encouragement of such fragile people to report and maintain an involvement in the prosecution of offenders. Obviously, the Government does not wish for this to be a result of this reforming measure.

It is true that the provision does not require the production of a copy of the tape. It is also true that the current legislation provides for the production of a copy of the tape but, similarly, does not require it. In this area of criminal procedure, perceptions are often as important as realities. Undoubtedly, it is difficult to persuade those children who

are, for example, victims of sexual assault to make a statement and give evidence in court.

The Government does not desire that these large scale, significant procedural reforms should be impugned for this reason. The key to this provision in terms of justice to the accused is that the defence at least has access to a transcript of the tape and a reasonable opportunity to hear it, if audio, or to see and hear it, if video. This amendment preserves that protection and addresses the concerns of the Victims Branch.

The Hon. K.T. GRIFFIN: I indicate support for this motion. I moved an amendment that sought to ensure that there be a transcript available to the accused and that that be a transcript of an audio or videotape. The original Bill contained an option that the tape or a viewing, should be made available. I can recognise the need for dealing with the matter in the way proposed in the amendment because it could be pre-judicial to the interests of a child who might be displayed on video giving a statement, particularly if that fell into the hands of the accused. I am happy to support it.

The Hon. I. GILFILLAN: I have no opposition to the amendment; I support it but I do have a question that the Attorney may be able to assure me can be handled either by interpretation of the amendment or his comments on it and that is whether the defendant will have the right to view the tape more than once. In my assessment of what is fair use of the tape, it may require that the defendant or his or her legal advisor should have access to the tape for more than one viewing. The wording seems to be quite prescriptive and limited to one occasion, but it might be that the legislation allows for more than one. I would ask the Attorney to comment.

The Hon. C.J. SUMNER: It is drafted in this way for the obvious reason that a time limit is involved of 14 days before the defendant's appearance to answer the charge and it provides that the transcript must be made available within that time frame or in accordance with that time frame and also the opportunity to view it or hear it has to accord with that time frame. However, I do not believe that the prosecution would or could sensibly refuse other opportunities to view it if that was requested by the defence. By that I mean other reasonable opportunities. Obviously, if they want to watch it four or five times a day for a week, one might consider that to be unreasonable. I think a court would say that the defendant does have other opportunities to see it and they would probably not allow the trial to go ahead if the defendant could make out a case that to go ahead would prejudice them because they had not had an adequate opportunity to hear or see the tape. I think that is adequate protection.

The only other way that it could be done would be to add words to the effect that the prosecution will at such other reasonable times make the tape available on the request of the defendant, but I do not believe that is necessary. If the prosecution behaved in an unreasonable way in this respect there would be criticism and it may be that it would hold up the court proceedings, something that the prosecution obviously would not want, so I do not see the need for it. It is here in this form because there is a time consideration and this places the obligation on the prosecution to do certain things at least once by the time specified.

The Hon. I. GILFILLAN: I am relatively satisfied with the Attorney's answer and I would be more assured if in fact the courts were likely to interpret how it would be applied, based on his comments. I do not believe that to be invariably the case. I would ask no more of the Attorney; he has already acknowledged that it is a question worthy of consideration and that it is kept as a potential amendment to this regulation, if in practice it proves to be a problem. I repeat: I asked for the undertaking that if it proves to be a problem we will move to amend the Act.

The Hon. C.J. SUMNER: I do not imagine there will be a problem and, if there is, I suppose we can direct the DPPs.

Motion carried.

Amendment No. 5:

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

That the House of Assembly's amendment No. 5 be agreed to.

This amendment changes the test to be applied by the court in determining whether or not an accused person should be committed for trial. The test for committal was the subject of considerable debate both before and after the introduction of the Bill. A variety of differing views were expressed, although it was agreed on all sides that the test should be strengthened so as to make the committal a better filter of weak cases. In the event, the test originally proposed was amended in the Committee stage.

Subsequently, the Chief Justice expressed the view that the amended test would require the Magistrates Court to inquire into the weight of the evidence in a manner too much like a trial and hence would be inimical to the principal policies carried through by these reforms to the committal system. The Chief Justice has suggested that a well known test, known as the 'Prasad test', applied by a trial judge to a submission of no case to answer at the close of the case for the prosecution, would serve the purposes of the reforms well and have the advantage of already being well known and applied. The amendment therefore proposes to replace the test that was in the Bill as it left the Legislative Council initially with that Prasard test.

The Hon. K.T. GRIFFIN: I am happy to support that. I was asked, prior to this being proposed in the House of Assembly, whether that would be acceptable and I indicated that it would be. I can recognise the difficulty with the earlier provision as has been drawn to the attention of the Attorney-General. This is a higher standard than is in the law presently and is appropriate in all the circumstances.

Motion carried.

Amendment No. 6:

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

That the House of Assembly's amendment No. 6 be agreed to.

This amendment is consequential upon an amendment to include a provision empowering the District Court to refer a case to the Supreme Court.

The Hon. K.T. GRIFFIN: We agree to it.

Motion carried.

Amendment No. 7:

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

That the House of Assembly's amendment No. 7 be agreed to.

This amendment inserts a power to make regulations. There has never been a power to make regulations under the Justices Act, but it is now needed for a variety of reasons, for example, listing industrial offences, fees and witness fees. The omission was an oversight.

The Hon. K.T. GRIFFIN: It is agreed to.

Motion carried.

WRONGS (PARENTS' LIABILITY) BILL

Third reading.

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

That this Bill be now read a third time.

The Hon. K.T. GRIFFIN: The Liberal Party is disappointed that none of the amendments that we proposed were successful.

The Hon. C.J. Sumner: That was the Democrats' fault.

The Hon. K.T. GRIFFIN: It may have been the Democrats' fault but I would have thought that the Government would have been comfortable with giving consideration to the amendments, as they improved the Bill considerably. They sought to make the Bill fairer and not raise the prospect of a family being crushed by an unlimited liability or creating other problems. I have been through all the arguments in relation to that, including the cap on liability, the onus of proof provision, and the binding of the Minister for Family and Community Services, all of which in our view would have substantially improved the Bill.

Now that the third reading is before us and the Bill unamended, there is no option but for the Liberal Party to express regret that there was not a preparedness on the part of the majority of members of the Council to agree to the amendments and to indicate that, rather than allowing a bad piece of legislation to pass that is likely to have a detrimental effect on ordinary citizens, put families under threat and expose them to cross-examination in court, we will not support the third reading.

That is a regrettable position because we did believe that there was an area for compromise both on the part of the Government and on the part of the Australian Democrats that would have made it a much better Bill and would have met the community's expectation, as well as the Government's expectation, that some legislation would be in place to address the issue of parental liability in those severe cases where parents quite obviously had not exercised the sort of responsibility that the community expected of them. It is in those circumstances that I indicate that we are not prepared to support the third reading of the Bill.

The Council divided on the third reading:

Ayes (9)—The Hons. T. Crothers, M.S. Feleppa, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, C.J. Sumner (teller), G. Weatherill and Barbara Wiese.

Noes (12)—The Hons. J.C. Burdett, L.H. Davis, Peter Dunn, M.J. Elliott, I. Gilfillan (teller), K.T. Griffin, J.C. Irwin, Diana Laidlaw, R.I. Lucas, Bernice Pfitzner, R.J. Ritson and J.F. Stefani.

Majority of 3 for the Noes.

Third reading thus negatived.

STATE BANK REPORT

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

That upon presentation to the President pursuant to subsection 25(5) of the State Bank of South Australia Act, 1983 of the copy of the report of the Auditor-General relating to the State Bank of South Australia made pursuant to his appointment under section 25(1) of the Act, the President is hereby authorised to publish and distribute the report.

This motion will enable the President to publish and distribute the report of the Auditor-General relating to the State Bank. The Government was concerned to ensure that the report be made public as soon as possible after it was delivered to the Governor, the Royal Commissioner, the President and the Speaker in the Parliament. This exercised our minds for some time as to what was the best way of doing this. One option was to try to see whether it could be dealt with by the royal commissioner tendering the report before the royal commission, thereby attracting privilege against any defamation proceedings. That was a possibility, and I think the royal commission probably would have cooperated.

However, the final decision was that it was better for Parliament to do it, because it is a report that must be presented to Parliament. It was decided that, because Parliament would not be sitting, we should by this means authorise the publication and distribution of the report, and therefore media outlets and others involved in the fair and accurate reporting of the Auditor-General's Report would have qualified privilege from any defamation action. Of course, by this motion, Parliament itself has the absolute privilege which attracts to it. After consultation with the Solicitor-General, the Clerks and the Hon. Mr Griffin—who also made some suggestions as to the appropriate form of the motion, which is why I have moved it in an amended form—it was felt that this was the best method of dealing with it, that is, not through the royal commission option but through the Parliament.

I think that no-one really viewed the prospect of Parliament being reconvened on 2 February with any great enthusiasm. This motion achieves the objectives that we all want, which is the earliest possible release of the report for public consideration and consumption without delay. There will be no delay because of the lack of publication of the report in the royal commission hearings. The only comment that I would like to make is that this morning I had the rare opportunity to listen to ABC radio. I do not do that very often but occasionally when I am in the car going to the gym I do listen to it. There was a report on the ABC news that the Government had changed its mind about making this document public. I am not quite sure where the ABC reporter, one Alex Kirk, got that from, but it seemed to be a bit of a creative approach to the news.

The fact of the matter is that the Government had always intended to make this report public at the earliest opportunity. Had the Auditor-General reported by now, clearly we would have done it when the Parliament was sitting. Given that Parliament will not be sitting, we had to find an alternative mechanism. I think this motion achieves that objective.

The Hon. K.T. GRIFFIN: I support the motion which provides a procedure to enable the Auditor-General's report to be made available as soon as it is delivered to both the Governor and the President and Speaker, and to be protected under section 12 of the Wrongs Act so that the material is absolutely privileged as a paper or report authorised to be published by a House of Parliament.

The Hon. C.J. Sumner: Absolutely privileged for us.

The Hon. K.T. GRIFFIN: Absolutely privileged for the Auditor-General. It is a question of who publishes it. If the Auditor-General is required to deliver it to the President and Speaker, and if the President and Speaker were to publish it without the authority of the Council, it would not be privileged. In my view it is absolutely privileged so that it can be distributed and the Auditor-General is not subject to any liability, nor is the President or the Speaker.

When I looked at the notice of motion it seemed to me that it did not comply with the provisions of the Wrongs Act, that there was no authority to publish, and what governs the issue of privilege is the authority being given by the Parliament to publish. This motion will give that authority and, as I understand it, both the President and the Speaker will be available as soon as the Auditor-General is ready to deliver the report, and it will really be published and distributed immediately it is presented to the President and Speaker respectively. In that context I support the motion.

Motion carried.

STATUTES AMENDMENT (CRIMES CONFISCATION AND RESTITUTION) BILL

Returned from the House of Assembly without amendment.

CORPORATIONS (SOUTH AUSTRALIA) (MISCELLANEOUS) AMENDMENT BILL

Returned from the House of Assembly without amendment.

[*Sitting suspended from 6.5 to 7.45 p.m.*]

WINE GRAPES INDUSTRY BILL

Adjourned debate on second reading.
(Continued from 26 November. Page 2291.)

The Hon. PETER DUNN: As one who enjoys a glass of wine, I feel that this is a suitable time to be discussing this matter—straight after dinner. This is an important Bill for a number of reasons. Even though it is relatively short, the effect is to produce in the long term, we hope, a healthy wine industry in 1992, bearing in mind in the past 12 months there has been an enormous increase in the export of wine from South Australia. As a result, we look like running out of some of our better wines. Of course, we must keep our export industries. I think that the South Australian product is as good as, if not better than, any wines that I have had anywhere in the world. I have not drunk the very best of the French or Italian wines, but certainly the South Australian wines are very good.

Over the years South Australia has performed rather poorly as regards growth in the wine industry. That is because of our method of determining the grape price. There was a statute in the past which allowed the setting of a minimum grape price, but it was not working for a number of reasons. One reason was that the other States used to wait until South Australia set its grape price, because we had to do it under statute, and then they would set their price $10 to $15 below.

The Hon. M.J. Elliott: Not worth setting it.

The Hon. PETER DUNN: That is true. What happened was that South Australia set its base or minimum price—it had to—and the other States came in underneath it by whatever amount was necessary. As a result, wine manufacturers were attracted to other States, because they could buy grapes cheaper. In fact, some manufacturers in South Australia were going interstate, buying their grapes and coming back. Ultimately they shifted into New South Wales and Victoria and started manufacturing wine. Whereas South Australia used to produce about 80 per cent of South Australia's wine, I think we are now down to less than 60 per cent. That is a sad indictment, because South Australia is known as the wine State. There is a lot of anecdotal evidence that we still are, but there is also a lot of evidence that we have been losing it.

The effect of the Bill is to aggregate three areas that border on the corners of New South Wales, Victoria and South Australia, virtually based on the Murrumbidgee/Murray Valley area. It puts those areas together, and they have all agreed that there can be an indicative price. I am not sure exactly what an indicative price is. I have looked it up in the dictionary and I can understand its definition, but when applied to the Bill it is not very clear.

It involves bringing New South Wales, Victoria and South Australia into line and setting a price that the grape producers know they can look for in the future. If the grape producers know that price, if they get a price signal, that is a form of market intelligence which will allow them at least to budget for the future or to set a plan for what they should be growing in the future.

In the past, unpreferred varieties of grapes have been grown and, as a result, we are not producing good wine, because those new varieties of grapes are not suitable for the newer types of wines. The varieties we ought to be growing are grapes such as Chardonnay, Rhine Riesling, Cabernet Sauvignon, merlot and pinot noir. Those are the preferred grapes for making the better type wines. Many of the grapes grown in this State are of the old variety such as pedro, palomino and doradillo, and they do not make good wines—or not as good as the wine we get from the preferred varieties.

If grape growers, particularly small grape growers, can budget and plan ahead, they will have some chance of changing to those varieties so they can provide the manufacturer with the right kind of grape to make the right kind of wine. The cost of replanting a vineyard today is about $30 000 per hectare. If we take into account the posts, the wire, the preparation and the waiting time until those grapes come into production, that is probably a fairly conservative figure.

Australian growers could produce grapes cheaply in comparison with other countries because of mechanisation. If members have been to Germany and visited the Rhine Valley, they would know that the grapes are grown on almost vertical slopes—and on rocks at that. I do not know how the Germans prune or cart the grapes: they must do it in buckets. They certainly could not reap them by mechanisation, as we do in South Australia where there is flat country that is easy to irrigate. We can get quite high production from our land.

The Hon. T.G. Roberts: They do it at night so that the tourists can't see them.

The Hon. PETER DUNN: That's exactly right. The honourable member says that they reap at night. That is true, but there is a reason for that: it stops oxidation and so on. Modern wine making techniques have been developed in Australia rapidly. On average, in South Australia one acre produces six to 10 tonnes—

The Hon. M.J. Elliott: Is that irrigated or unirrigated?

The Hon. PETER DUNN: That's under irrigation—or less in the unirrigated areas (probably more in some cases). We have an opportunity to export our wines, and surely this State needs as many exports as we can achieve. We are way below other States in terms of manufacturing. This year, South Australia has really contemplated its navel for half the year. I think we should encourage people to export everything they can, and that would produce some stability within the industry.

As I said, the Bill covers the Riverland, the Sunraysia and the Murrumbidgee area and does not really deal with the South-East, the Clare Valley, Port Lincoln or wherever else grapes are grown. It will achieve a price that people can look at. One group of growers has put up some resistance to this Bill, that is, the Riverland Growers Unity Group. It had some misgivings, but I have not heard anything from that group recently, so I presume that it agrees that the legislation has some merit.

I refer now to the payment. Clause 3 provides that 'payment' includes any form of monetary consideration or non-monetary consideration to which a monetary value can be assigned'. My interpretation of that is that it would allow

bartering. I am not sure that that is what is intended in this Bill. If I were to buy a new tractor or a rotary hoe from a cooperative or a wine manufacturer and if I delivered 500 tonnes of grapes in lieu of payment, that is bartering. It is a non-monetary exchange. I am not sure that this Bill is aimed at that.

I note that the Bill picks up share farming agreements. That is fairly important, because there are a lot of small growers. I must admit that this Bill really deals with small growers. The three big growers in the State are the South Australian Brewing Company, which has under its care Penfolds, Lindemans, Wynns and Seppelts (it is a pretty big concern), the Orlando group and Wolf Blass Mildara. Between them they control 70 per cent to 80 per cent of wine production in this State. The boutique wineries, being much smaller, naturally do not have so much influence. So, it is the big companies that have been screwing the little producers and giving them a hard time.

Members interjecting:

The Hon. PETER DUNN: At least it has got the growers and the producers together. This Bill allows them to come up with an indicative price and it gives some protection to those small growers, because it imposes an order on producers to pay up where money is owed when it is time—

The Hon. M.J. Elliott interjecting:

The Hon. PETER DUNN: The honourable member interjects—

The PRESIDENT: Order! Members will have the chance to enter the debate.

The Hon. PETER DUNN: I do not disagree that it does not already exist. I am telling the honourable member what is in the Bill. I do not think he has read the Bill. He is an expert on everything; there is nothing that comes into this Chamber on which he is not an expert. All I am saying is that the Bill provides that, where a wine producer owes money to a grape grower, he has an obligation. I am not interested in whether or not that happened in the past; I am saying that this Bill will be enacted shortly and, when it is, it will help to ensure the growers get their money. I am more interested to see that grape growers get their fair share.

I was explaining that in the past the big three firms, because they produce a lot of grapes of their own, through devious methods have been making it difficult and paying minimal amounts to grape producers. This Bill goes some way towards correcting that. I am not sure how it does it. I do not think it will achieve what it is designed to achieve. I think it is a half-way house—a placating measure—but it does go some way towards helping those people to get an idea of what they will be paid for grapes a little way down the track.

So, the provisions of this Bill keep the processors up to scratch in terms of payments, and I do not disagree with that. When the Minister gazettes an indicative price, there is obviously an obligation to pay that money if the grape producer delivers grapes under that criteria and signs an agreement. The producer is then obliged, under this legislation, to pay for the grapes.

I received one interesting letter which puts it fairly clearly. I will not bother to read it, because it goes over roughly what I put but in two very neat paragraphs. I agree with the Bill. I am not so sure of its end result but, if it does help to level out prices or make sure that South Australia is competitive with the other States and in the export market, that is what we have to aim at. We cannot just continue producing wine purely for Australia, that is stupid. We must get into the export market. The other day I met a gentleman from Sweden who was out here to buy Australian wines, but he wants large quantities of consistent wine. I am not sure that it is able to be produced. I support the Bill on the basis that it goes some way towards assisting in our export markets and in helping South Australian grape growers.

The Hon. M.J. ELLIOTT: The Democrats oppose the second reading of the Bill because it goes nowhere towards helping the growers. Perhaps the best starting point is to quote from a series of letters from the Riverland Growers' Unity Association which put a very coherent case for the difficulties that they do and will face under the current legislation.

The Hon. Peter Dunn: How many of them are there?

The Hon. M.J. ELLIOTT: More than there are of the UF&S, but I will get to that in a moment. The first letter written to me on 10 November from the RGUA states:

RGUA has been advised that the South Australian Government will be attempting before the end of the current parliamentary session on 28 November 1991, to have passed through both Houses, a Bill which is to:

(1) Empower the Minister of Agriculture to publish in the *Gazette* an indicative price for each variety of wine grape grown in the irrigated (that is, Riverland) area of South Australia, and delivered to a winery. (These prices would be based on advice from a committee of three UF&S and 3 winemaker representatives, in South Australia).

(2) Transfer from the Prices Act 1948 to this new Act, the terms of payment conditions, and subsequently publish these in the *Gazette*, and

(3) Delete from the Prices Act, the sections 82 *(a)* to *(e)* inclusive, which relate to the power (unused since 1987 vintage) of the Minister of Consumer Affairs, to declare minimum legislative prices and terms of payment. [Note: terms of payment already exist].

These proposed changes stem from a Trade Practices Commission draft declaration dated 9 October 1991, which will for the vintages 1992-94 inclusive:

(1) permit committees as winemaker and grower representatives to negotiate with South Australia, Victoria and New South Wales, and between the three States, with a view to arriving at a set of indicative prices for each variety of grapes (except five premium varieties) grown in irrigated areas of these States, and

(2) require that, at the same time and in the same manner as the indicative prices are advised to winegrape growers, they should be also provided with a summary of the reasons for setting the prices at these levels.

The scheme:

(1) applies only to the irrigated areas—and thus, for example, on 1990 vintage figures, to approximately 33 per cent of total Australian production, on a Riverland (33 per cent), Sunraysia/Mid Murray (15 per cent), and Mia (15 per cent) break-up,

(2) recognises that these indicative prices will only be used by wineries as a guide (a fact openly admitted by them to the TPC) and

(3) assumes that, armed with these indicative prices, the 1 000+ individual South Australian independent winegrape growers will have sufficient bargaining power and skill, to go and negotiate their own actual prices (and quantities) for their own grapes with the relative handful of winemakers available to them.

The Minister of Agriculture (and presumably the Cabinet) is attracted to the scheme because of the possibility it provides for improved market information to growers. He seems oblivious to the proposition that if (as the TPC itself has opinioned [13.25]) '... the proposed scheme will not provide the growers with any significant countervailing market power ....', the additional information becomes of purely academic interest.

For what is the advantage of the scheme, if it provides these independent growers with information but no more power than they have had in the past, to counter the often-blatant price manipulation that wineries have customarily engaged in?

Additionally, one of the key justifications given to the TPC by the UF & S and other supporters of the scheme, and accepted by the TPC, was [13.18] that if the scheme was put in place it would assist Governments to resist pressure from growers to have minimum legislative pricing reintroduced in the Sunraysia and Riverland! One therefore suspects this as a further reason for the Minister's desire to rush this new legislation through the Parliament!

RGUA contends these proposals have had inadequate discussion amongst Riverland and wine grape growers—those South Australian growers to be most directly affected by this scheme. The UF & S in its capacity as the peak winegrape grower representative body, has steadfastly refused to call a general meeting

in the Riverland (such as it has already advertised for Barossa growers next week)! The only discussion that has taken place, apart from a 10-minute segment at the end of the local cooperative winery AGM, has taken place between the handful of grapegrowers who attend UF & S Riverland branch meetings.

The 90 or so wine grape growers who last Thursday attended an RGUA-sponsored general meeting under an independent Chairman in Berri, to hear the issue debated between the UF & S and RGUA, were disappointed that the UF & S were not prepared to turn up, and were sufficiently alarmed by the implications of the scheme, to:

(1) request that a letter be sent to all South Australian politicians, protesting at the way they feel they have been railroaded by UF & S secrecy and undue Government haste on this issue; and

(2) circulate a petition calling on State politicians to refuse to endorse the Government's proposed new legislation, and to refuse to amend in any way the existing pricing legislation, until a new widely-debated, majority approved reform package can be put in its place.

To act precipitously now, would be to:

— fail to add materially to the bargaining power or financial viability of already hard-hit Riverland wine grape growers and

— remove, possibly for all time, the prospect of being able to revive use of minimum pricing legislation as part of such a reform package.

It is hard, on the other hand, to conceive that a failure to act will put wine grape growers in any worse a situation than they have suffered over the last couple of seasons. Indeed, such action may well provide the impetus required for genuine reform.

The last thing independent wine grape growers in the Riverland and elsewhere need now is a bandaid solution which institutionalises winery self-interest, UF & S-type 'free'-market ideology, and an apparent Government predilection for the soft option.

We therefore urge you on this occasion, to do nothing that will change the wine grape pricing *status quo*.

[Signed] Phil Lorimer
Secretary, RGUA

A second letter of 15 November states:

Further to my previous letter, the TPC-approved scheme for which you are shortly to be asked to support new enabling legislation:

- applies only to wine grapes in irrigated areas of the three States;
- has been authorised for only a three-vintage period, after which the scheme and its effects will be completely reviewed by the TPC;
- assumes that wine maker and grower representatives will be able to agree on indicative prices for each variety (except the five premium varieties excluded from this scheme) but provides no machinery by way of independent conciliation or arbitration in the event that agreement cannot be reached;
- makes the ludicrous assumption that once the indicative prices have been declared, individual growers have the necessary skills and bargaining power to be able to negotiate with a winery their own prices for their own grapes;
- in effect, gives wineries the sole discretion over what is actually paid, by allowing them the uncontestable right to say for what purpose (and therefore what price) the grapes will be used; and
- provides an opportunity, with TPC support (because of the alleged improvement it provides for 'competition'), and with UFS/Wine Grape Growers' Council approval (for ideological reasons), to remove the existing legislated minimum pricing provisions from the Prices Act.

And most damning of all, this whole process has been characterised over the last 18 months by the complete failure of UF & S, the organisation claiming to speak for the majority of grapegrowers in the Riverland, to consult with, inform or debate the provisions of the scheme and its implications with other than the relative handful of active numbers who have been prepared to attend its branch meetings.

In our previous correspondence, the request was made on behalf of all these winegrape growers who attended the general meeting in Berri on 7 November that the new legislation be rejected outright. Those present were also adamant that there should be no amendment to the existing minimum pricing legislation.

If you and your Party are unable to support this request to reject the new legislation completely, you are urged to ensure that no amendment is made to the existing minimum pricing legislation, even if you find it necessary to allow passage of the new provisions relating to the Minister's ability to declare indicative prices and to the transfer of existing payment terms to the new Act. In that way, when this scheme is shown in practice to be the sham that it is, there will still be in place a minimum pricing provision which can then be used as part of a genuine reform package for the industry.

It would also seem sensible that, as the scheme has a present life of only three vintages before it is to be extensively reviewed by the TPC, the duration of the new Act should be similarly limited to three years. At that time, it is to be hoped that, whichever Party is in power, there will be less Government preparedness to accept the views of a powerful unrepresentative minority, and more effort to ensure that those most directly affected will be given a genuine opportunity to participate in that review.

Should you require further information, we will be happy to supply it, but again, for the sake of independent wine grape growers in the Riverland and elsewhere, we trust that, whatever also happens, you and your Party will be prepared to let the existing minimum pricing legislation remain unamended on the minute books.

Yours faithfully
Phil Lorimer, Secretary,
R.G.U.A.

A final, shorter letter, a copy of which I have received, was sent to the Hon. Peter Arnold on 25 November and reads:

Herewith a petition signed by over 330 Riverland wine grape growers sufficiently concerned at impending changes to wine grape pricing legislation to have made the effort to sign it. They are incensed at the lack of consultation which has been carried out both by the politicians who are about to make this change and by the 'grower' organisation which claims to represent Riverland wine grape growers, but which has refused to call a general meeting in the Riverland or provide any other opportunities at which Riverland growers could be:

- informed about the complexities and detail of this TPC-approved scheme; and
- given an opportunity to express an opinion about it.

They find this particularly galling, as they, the ones to be most directly affected, are the ones who have been least directly consulted in this whole process. When tabling this document, the point should also be made that although the numbers here represent less than a third of the total number of Riverland wine grape growers, this number is also well over 50 per cent above the number of growers which the UF&S claims to have as current financial members in the Riverland—and at least a 10-fold increase on the numbers who actually attend and have an input, via UF&S Riverland branch meetings, into UF&S policy!

So, given this fact, and the reluctance of a number of frailer hearts to risk possible winery victimisation by adding their names to the list, we trust this petition will be regarded with the seriousness which it deserves!

Those letters say it all. They are representative of what the ordinary wine grape grower in the Riverland is thinking. If members have seen division amongst barley growers, I assure them that the division among horiculturists is even greater, against the position the UF&S is taking. The scheme that is being proposed will not work. When I first spoke to the RGUA I said, 'The Government is so determined to do this that, even though it has the old minimum pricing powers, it will not use them. On that basis, the sooner we have this other system and it fails, the better off you will be.'

But they persisted. They feel that the thing should be beaten. They say it is wrong. Just arguing to give it a chance to succeed or fail, even though they believe it will fail, they found it unacceptable, and I believe they are right. The failure in the current deregulation process in Australia can be seen particularly in areas such as horticulture and the wine grape industry; that is, free enterprise in the laissez-faire form would work very well if there were many sellers and many buyers, but that is not the situation we have in the wine grape industry.

One company alone buys more than half the grapes in the Riverland, and a substantial majority of the rest is bought by only a couple more wineries. The fact is that we do not have normal market conditions where the sellers have many buyers from which to choose. If one buyer, particularly the big one, knocks them back, the chances of sale are extremely low. The totally laissez-faire free enter-

prise system that we have allowed to happen in Australia is of a sort that would never be tolerated in other countries such as the United States, which would have its anti-trust legislation breaking up monopolies of the size we have allowed to develop here.

The growers have no hope, and we must recognise just how price sensitive they are. We have only to take the matter of 5c a bottle transferred back to the growers, and that represents as much as $25 000 to the average grower. Probably at this stage, that is more than four times their income. The growers are producing right on the margins of cost production. It takes only a very marginal increase and they can live reasonably well: never like kings but reasonably well.

It takes only a marginal reduction, and they are gone. In the sort of marketplace we have operating at the moment this scheme means that they are going to be cut. Indicative pricing means nothing. There is absolutely no obligation and it is not worth the paper it is written on. We are saying that, if this legislation is passed, we will try out a scheme for three years. In the next three years, many growers will go to the wall.

Some people will use the argument that they are only small and inefficient and that that is the way things are. I do not accept that. With as little as 5c or 6c a bottle going back to the growers and having such a profound effect on their income, we are not looking at their being particularly greedy or needing particularly much. They are quite efficient producers; they produce high tonnages per hectare of a good quality product. Of course, irrigated grapes will never be of the quality of the dry land grape, for obvious reasons, but they are still producing a good quality product and very good wines are made from it. However, they will be thrown onto the scrap heap over the next few years. In fact, to some extent many are already there and the only reason that they have not left their properties is that nobody has been willing to buy them.

The Hon. Peter Dunn: It's the same right across the State.

The Hon. M.J. ELLIOTT: But it has been an ongoing problem in the Riverland, aside from the particular difficulties we have at the moment, which have also been inflicted by deregulation of the banking system, the financial system and trade, which have all been compounding problems and, once again, the horticulturists have been hit harder than most.

The sad fact is that we have a grower organisation (the UF&S) which has been a broadacre organisation; it is only in the past couple of years that it has moved into the Riverland. The majority of growers have not joined; it does not have the support of the majority of growers but what the UF&S does have is the ear of the Department of Agriculture and therefore the ear of the Minister. The message that is coming from the Riverland into the bureaucracy and the higher political circles here is not the message that should be getting through. That is the reason why we are seeing such appallingly bad legislation. Only a couple of years ago we had a chance to start to get things right. The Hon. Mr Dunn was right in saying that for a while we were the only State setting minimum prices, but about three or four years ago legislation was passed to allow the MIA to set a minimum price. Victoria was looking at it.

For the first time we were in a position where those three irrigated areas could have had a minimum price operating at the same time and we could have determined how that worked. Right at the time that happened the South Australian Government pulled out and stopped setting the minimum price. It pulled the plug; virtually the same year as the MIA introduced minimum pricing and Victoria was looking at it, South Australia pulled out. A chance was never given for a three State minimum pricing agreement to work. Instead, we had indicative pricing.

I think the Hon. Mr Dunn said that he tried looking in the dictionary to find out what that means. What it means is absolutely nothing. Indicative pricing means, 'This is the sort of price you would pay if you were really nice because it is fair and reasonable.' It will not be fair and reasonable because there will be thousands of sellers and two or three buyers. We will see more of these people going down the gurgler. That is what we are voting for. The Democrats are opposed to this piece of legislation.

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

STAMP DUTIES (ASSESSMENTS AND FORMS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 27 November. Page 2379.)

The Hon. C.J. SUMNER (Attorney-General): During the second reading debate the Hon. Mr Lucas quoted from advice that he had received from someone associated with the taxation industry. In general terms the claim was being made that items such as lollies and icecreams sold by a registered person would be caught for rental duty. This is, in the Government's view and indeed in the view of the Crown Solicitor, clearly not so. For example, if a person hires a sander and at the same time purchases some sandpaper to use in the sander, the amount received in respect of the purchase of the sandpaper is not received in respect of the registered person's rental business and is not and never has been liable to duty. This is not only the view of the Commissioner but also reflects his legal advice on the effect of the Bill. The State Taxation Department officers had discussions with relevant industry bodies regarding this aspect and they will be issuing a circular to all registered persons to put their minds at rest on this point.

Also during the second reading debate the Hon. Mr Lucas asked whether I would confer with the Commissioner of Stamps on whether the recurrent arrangements with respect to deduction would not change. The Commissioner has advised me that there would be no change in his officers' attitudes towards servicing cost deductions. A number of amendments were foreshadowed and the Hon. Mr Lucas spoke to these amendments at the second reading stage. I will address them now and, hopefully, we will not repeat the debate. The first amendment dealt with prescribed forms versus approved forms. The Government opposes this amendment. For many years now there has been a consistent policy not only within tax legislation but all legislation to deregulate the administrative processes by removing the requirement for administrative matters such as forms layout and design to have to be prescribed by legislation. This process was commenced by the Tonkin Liberal Government and followed by the current Government. The Act generally sets out the principal matters which must be shown by taxpayers in returns, that is, the total amount received for servicing costs and so on and generally the Act sets the parameters regarding the information to which the Commissioner is entitled.

Forms to standardise the collection of this information are designed taking account of taxpayers' requirements, computer processing requirements and legislative requirements. In many instances forms are developed in consultation with relevant industry bodies. The amendments in

this Bill to delete prescribed forms are consistent with this approach. The amendments have not been included so that fundamental changes can be made to the existing forms, nor have they been included in an attempt to expand the range of information that is currently required from the taxpayer.

The next substantial amendment relates to a new clause and the Commissioner of Stamps through ongoing compliance programs identified a practice of artificially assigning disproportionate amounts to ancillary or exempt charges and only declaring nominal or incorrect amounts on their returns. The Commissioner referred this practice to the Crown Solicitor for advice and, based upon that advice, recommended to the Government that an amendment to the legislation was necessary to remove any ambiguity in the legislation that would allow such a practice to continue.

It is not the intention of the legislation to tax items that the State Taxation Office has previously regarded as not dutiable. The intent is to make clearer the existing provisions that define what is chargeable where it could in the past have been argued that there was some ambiguity in the legislation. That has been done on the Crown Solicitor's advice and it is the Government's view that the amendment as drafted does not extend to taxing amounts that are unrelated to their rental business or business of another kind carried on by the registered person.

The Government's view is that the amendment on this point (new clause, page 2, after line 6), merely restores the *status quo*. I will deal with a couple of the other minor amendments in Committee.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. DIANA LAIDLAW: I suspect that I am taking something of a liberty in raising the matter of stamp duty on the transfer of licences as they relate to taxis, but I am being pressured almost every day from various taxi owners highlighting the problem they have experienced and are experiencing because of a recent circular issued by the Commissioner of Stamps.

I want to highlight the problem tonight and see whether the Minister will place a comment on the public record. Recently the Commissioner of Stamps issued a circular reminding taxi owners that the State Taxation Office determined in December 1987 that, in terms of the issue of oral contracts and transfers of licences, stamp duty was applicable. Apparently, that decision in 1987 has been understood by a few people who have transferred taxi licences in that time, but it has certainly not been appreciated by the great bulk of taxi owners in this State to the degree that it is calculated that the majority of them owe the Commissioner of Stamps many thousands of dollars.

The gentleman who telephoned me today believes that he owes $9 000, and various other representations have been made to me by people who have calculated that they owe $3 000 and more. They have pointed out to me that they will have great difficulty in raising that money in this climate, and that they are putting off drivers who are working with them at a time of unemployment, notwithstanding the fact that we are coming up to the Christmas rush period.

I understand that the Commissioner has indicated some sympathy for the plight of these taxi owners by determining that he is prepared to enter a scheme of arrangement and that, without imposing penalties or prosecuting these owners, if they contact the Commissioner of Stamps by 1 January indicating that they are prepared to enter into a scheme of arrangement to repay the duties owed, he is prepared to accept such a compromise solution. I indicate that many of the taxi owners who have contacted me do not want to accept that arrangement. In each case, I have warned them that the Commissioner of Stamps does not have to be as lenient as I believe he has been in this case, and that not all people found to have not paid stamp duty are offered such schemes of arrangement without penalty or the possibility of prosecution for the non-payment of duties.

However, I can assure members that that has not pleased a number of taxi owners, who have asked me to inquire whether there is some way in which the Minister can enter into negotiations with the Commissioner of Stamps so that no liability is imposed on any person who has not paid their stamp duty as at 4 November, but that stamp duties could be paid or transferred from that date, which is the date of the last circular from the Commissioner of Stamps. Because this is presently a source of great agitation to the majority of taxi owners, can the Minister, in terms of her responsibilities of tourism and small business, provide any advice on the matter?

The Hon. BARBARA WIESE: I will ask the Minister responsible to study the contribution of the honourable member and respond to the issues that she has raised, although I understand that there has been considerable correspondence between the Minister of Transport and members of the taxicab industry on this matter. Therefore, the Minister's attitude on the issues raised by the honourable member is common knowledge. However, I will ask the Minister to respond formally to the honourable member.

Clause passed.

Clause 3—'Registration.'

The Hon. R.I. LUCAS: I oppose the clause. In my second reading contribution I outlined the Liberal Party's arguments put in both this and the other place for opposing this clause. There are a number of consequential amendments but, if my opposition to this clause is unsuccessful, I will not proceed with them. For the reasons outlined in the second reading, I ask the Committee to oppose the clause.

The Hon. BARBARA WIESE: For many years now there has been a consistent policy, not only within taxation legislation but in all legislation, to deregulate the administrative processes by removing the requirement for administrative matters such as form layout and design to have to be prescribed by regulation. This process was commenced by the Tonkin Liberal Government and has been followed by this Government. The Act generally sets out the principal matters that must be shown by taxpayers in returns, that is, the total amount received or servicing costs and so on, and generally the Act sets the parameters regarding what information the Commissioner is entitled to receive.

Forms to standardise the collection of this information are designed taking account of factors like taxpayer, computer processing and legislative requirements. In many instances forms are developed in consultation with relevant industry bodies. The amendments in this Bill to delete prescribed forms are consistent with this approach. The amendments have not been included so that fundamental changes can be made to the existing forms, nor have they been included in an attempt to expand the range of information that is currently required from the taxpayer.

The Hon. M.J. ELLIOTT: In general I have resisted attempts to take things from regulation to simple gazettal. I do not see that there is a problem in this area. It seems to me that the preparation of this form will involve a lot of red tape and I would like the Hon. Mr Lucas to put forward his argument as to what he considers to be the difficulty, because I cannot see one. Generally speaking, I resist things being taken from regulation.

The Hon. R.I. LUCAS: The Liberal Party indicated that this would be Democrat-friendly. It anticipated Democrat support. It is partly philosophical, as I indicated in my second reading contribution, and partly practical. The concern is that, in the future, a Commissioner of Stamps different from the present Commissioner of Stamps may well seek by way of an approved form detail over and above what is currently required by the prescribed form. I accept the undertaking given by the present Commissioner of Stamps that that is not his intention and I also welcome the Minister's statement to that effect in this Chamber.

As I indicated during my second reading speech, we are dealing not with one Commissioner of Stamps, no matter how amenable he or she might be at this time, but with a number of future Commissioners of Stamps and perhaps with changed attitudes by those Commissioners or by Governments over time. As a general matter of principle, the Liberal Party is seeking to ensure that Parliament, if it chooses, should retain some control over the form and the detail of information that might be required in the form. If it were in regulation, either House of Parliament could disallow it if it so chose. If it is left completely to the Commissioner, Parliament would have no say and individual members would have no say. It would be the decision of the Commissioner of Stamps and, from time to time, the responsible Minister. Those are the arguments, both philosophical and practical.

The Hon. M.J. ELLIOTT: I invite the Minister to respond to the arguments put by the honourable member, but I discussed the matter with ministerial advisers and we looked at the philosophical question but, in general terms, I prefer regulation. It was put to me that they can only ask for what they can legally ask for and, as such, this is proving to be nothing more than nuisance value. However, the Hon. Mr Lucas has made the suggestion that the form might become more exhaustive in terms of the information sought, and I am not sure for whom that would create the greatest nuisance value—the taxpayer or the Commissioner, who would have to tally it up. I have not considered that matter, and I ask the Minister to respond to it.

The Hon. BARBARA WIESE: I am advised that the Commissioner of Stamps will be entitled only to seek information that is allowed under the terms of the legislation and the regulations.

The Hon. R.I. Lucas: In this particular area, that is very wide.

The Hon. BARBARA WIESE: Not as I understand it. The issues upon which information can be sought are described clearly and, therefore, the Commissioner of Stamps would not be in a position to begin to add to forms in order to expand the range of information that he or she wished to collect. It just would not be possible under the law.

The Hon. R.I. LUCAS: In other sections of the Stamp Duties Act, the question whether the form is prescribed or approved by the Commissioner is followed by clauses which explicitly specify the information that can be included in the form. As I said in my second reading contribution—and I invited a response from the Attorney-General, now represented by the Minister of Tourism—I could not find in the Stamp Duties Act where in relation to this section there were those restrictions. There were a number of general comments, but there did not appear to be the sort of restrictions that existed in other areas.

For those reasons, I think that future Commissioners of Stamps may well be able to expand the range of questions and information required of small businesses in South Australia. The Liberal Party is ever mindful of the length and breadth of forms that businesses, small businesses in particular, may have to complete. Again, we hope that the Democrats might support small business in that respect by reducing the potential for further information and form filling by small business.

The Hon. M.J. ELLIOTT: This amendment and the others similar to it are to some extent, compared to some of the other matters that we are later to debate, fairly small bickies. The major reason why they are here is that the Stamp Duties Act is open at this stage and the Government has been rather routinely looking at these matters, though not in the time that I have been covering these Bills.

The Hon. R.I. Lucas: They will not be fussed if they lose it.

The Hon. M.J. ELLIOTT: That is what I was about to say. While I am concerned about any move away from regulation, I am not too perturbed by this. There has been sufficient debate along other lines that at this stage I see no harm in this clause failing. We can look at this matter again later. I do not think that at the end of the day it will be a huge imposition upon the Government. After all, that is not the reason why this Act is open. The Government has opened it to look at other matters within this Bill. I shall be supporting the amendment.

The Hon. BARBARA WIESE: I am advised that what happens in practice is that often industry bodies request changes in the layout of forms. They may not like the style of forms or they make it more difficult for them to provide the information that they are required to provide in accordance with the Act and regulations if it is laid out in one way rather than another. Therefore, they will often come to the Government to achieve changes in the way that the forms are laid out. Also, from time to time the Commissioner of Stamps decides, based on the feedback of information that he receives, that the layout of a form could be improved to make it easier for industry or for the Government to collect the information that is required in accordance with the terms of the Act and the regulations. The type, range and amount of information that is collected is not governed by the layout; it is governed by what is written in the Act and the regulations. It is difficult for me to grasp what the honourable member is suggesting might happen.

The Hon. M.J. ELLIOTT: If we were sitting until tomorrow I would ask for a chance to look at it. The fact is that we are not. As I said, the Act was not opened up for these particular clauses. I would use two basic rules. First, is the change urgent? No, it is not. Secondly, has some concern been raised? Yes, it has. In those circumstances, let us not rush into the change. For those reasons, at this stage I shall be supporting the amendment, but I shall be opposing the clause. I would have supported it at a later time had I the time to consider it in more detail.

Suggested amendment carried.

Progress reported; Committee to sit again.

CRIMINAL LAW CONSOLIDATION (SELF-DEFENCE) AMENDMENT BILL

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

Consideration in Committee.

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

That the Council insist on its amendments and make the following amendments to those amendments to which the House of Assembly has disagreed:

As to amendment No. 1

Before the word 'believes' insert 'genuinely'.

As to amendment No. 2

Before the word 'believing' insert 'genuinely'.

As to amendment No. 3

Before the word 'believing' insert 'genuinely'.

Before the word 'believed' insert 'genuinely'.

I have tried to isolate the point of difference between the two Houses. Although the House of Assembly rejected the whole of the amendment, I think it is clear from informal discussions that the only real dispute is whether the belief that we are talking about—that is, the belief relating to the force that can be used to defend oneself—should be a genuine belief or just a belief. As we know from informal discussions, that is the only substantive point at issue between the two Houses. I have moved my amendment in a form that isolates dispute. If my amendment is accepted, the word 'genuinely' will be inserted and I am confident that it would then be accepted by the House of Assembly. If my amendment is defeated in relation to each, the amendment moved by the Legislative Council will be insisted upon in its original form and it will have to go back to the House of Assembly in that form.

We have already had considerable debate about the use of the word 'genuinely ' and the point of view adopted by the Council—including the Hon. Mr Griffin and the Hon. Mr Gilfillan—was that either one has a belief or one does not and that the use of the word 'genuinely' does not add anything to the use of the word 'belief' on its own. However, I think one needs to look at precedents in this area. It may be the view of the Hon. Mr Gilfillan, after consulting the dictionary, that the word 'genuinely' is superfluous and does nothing or, in the worst construction, the word 'genuinely' qualifing or attempting to qualify or describe a belief is a tautology and, therefore, should not be contemplated. However, I think we need to look at some precedents that undoubtedly show that the word 'genuinely' has been used in this context by judges and courts previously.

The Hon. Mr Griffin relied on two authorities to formulate his amendment, and in both cases the court has used the words 'genuine belief'. The honourable member first referred to the case of—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Just a minute. Whatever it means, the fact is that they have used the word 'genuine' as an adjective to describe a belief. I will deal first with the United Kingdom Privy Council case of *Beckford v. The Queen*, 1988 1 Appeal cases, on which the honourable member said he was relying to formulate his amendments. I will quote only one paragraph from that decision, but it encapsulates what we are trying to do. The Hon. Mr Griffin said that he was trying to codify the law in accordance with the Beckford decision. That decision states:

> If then a genuine belief, albeit without reasonable grounds, is a defence to rape because it negatives the necessary intention, so also must a genuine belief in facts which if true would justify self-defence be a defence to a crime of personal violence because the belief negatives the intent to act unlawfully.

I think that summarises what we are attempting to do. There the court is referring to a genuine belief. I turn to the text of *Gillies Criminal Law*, page 299—I do not know which edition—dealing with the doctrine of self-defence, which states:

> This consideration aside, should the person who uses excessive force, but who genuinely believes that the force used is reasonable, be acquitted?

That poses the question but, in posing the question, there is still the use of the phrase 'genuinely believes'.

If we turn now to the other authority on which the Hon. Mr Griffin relied to a significant extent, we see that former Supreme Court Justice Wells, now Mr Andrew Wells, QC, in the case of *Morgan v. Colman*, 27 SASR at 336 and 337, outlined what were the common law principles relating to self-defence. There were a number of aspects to it which I will not read in full, but I will read the two which I think are relevant. In paragraph 6 *(d)* he stated:

> A person who, according to the circumstances as he understands them, genuinely believes that he is threatened with an attack, is not obliged to wait until the attack begins. A person so threatened may use reasonable measures to make the situation safe, and he does not act unlawfully merely because he forestalls or tries to forestall the attack before it has begun.

Again, from the point of view of our debate, there is Wells J, the authority upon whom the Hon. Mr Griffin has relied to a considerable extent, and whom he quoted extensively in his second reading debate, using the words 'genuinely believes'. This is a very eminent authority who believes that the use of the word 'genuinely' in that context has some work to do. He further states in paragraph 7:

> Account must be taken of all the circumstances as the person claiming to have acted in self-defence genuinely believed them to be, and the question answered whether he used reasonable force, having regard to the trials of the moment, or whether he plainly overstepped the mark.

Again, he uses the term in that context, I think, therefore, that it is consistent with those formulations, and it is fair to say on that point that we were not seeking to change the law. What we were seeking to change the law about was whether or not that belief had to be reasonable by reference to an objective test. We are saying that that belief does not need to be reasonable in respect of an objective test—that is, what might be considered reasonable to the ordinary right-thinking member of the community—but that the belief should be a genuine one. That is how we are changing the common law.

To my way of thinking, that is the exact formulation that was used in the paragraph that I cited from Beckford's case which talked about a genuine belief without reasonable grounds. We are trying to codify the circumstances of a genuine belief, albeit a genuine belief that may be without reasonable grounds if that belief is being considered in relation to what might be reasonable according to the standards of the man on the Clapham omnibus, the ordinary citizen.

So, I ask the Council to consider those precedents and to accept that this phrase is used in the law by very eminent authorities. I emphasise that it was used in the very case cited by the Hon. Mr Griffin on which to base his amendments. He said that we should codify the law relating to self-defence in accordance with a decision of the Privy Council in the case of Beckford. They were his words, and I think that, if we use the words 'genuinely believe', we are doing that.

The Hon. I. GILFILLAN: I am not moved by the Attorney's argument. It goes quite beyond belief that the degree of the validity of the belief will not be tested in the court whether or not the word 'genuinely' is included in the Act. It is a quite pointless adornment with no logicality and very little meaning. The other aspect is that, if the court decides that, in fact, it was a belief but not a genuine belief—

Members interjecting:

The Hon. I. GILFILLAN: I hope that the Attorney is listening.

Members interjecting:

The Hon. I. GILFILLAN: I assume that I now have the attention of the Committee. If we are to insist, as this persistent argument does, on having the phrase 'genuine belief', how will it be determined if the court finds that it was a belief but it was not a genuine belief? Is that a logical finding? Can we have a decision that the offender was found to have had a belief but it was not genuine? The idiocy of this conjunction of words is pointed out by that analysis. You cannot have a non-genuine belief: that is a fatuous situation that will never be found in a court of law.

All we are doing is making pointless the use of the English language. The sort of pedantry that insists that because it was pointless to be used in previous activities we must now slavishly adhere to it is a nonsense. We are a contemporary Parliament in 1991 making our decision for our legislation in South Australia. There is no point in putting 'genuine' or 'genuinely' before the word 'belief'. Therefore, these arguments that I consider to have no effect on the usefulness or effectiveness of this Bill should leave us unmoved. I will not support the Attorney's amendment.

The Hon. K.T. GRIFFIN: I move to amend the motion as follows:

Leave out all words after 'insists on its amendments'.

I acknowledge that in the judgments to which the Attorney-General has referred there is reference to a genuine belief. It is used, though, in the context of distinguishing between a belief actually held and a belief that was not held, and that is a judgment made after the event.

The Hon. C.J. Sumner: Then support it.

The Hon. K.T. GRIFFIN: No.

The Hon. C.J. Sumner: Why not?

The Hon. K.T. GRIFFIN: I am saying that it is used in the context, because a belief is a belief. The Attorney did not listen to what I was saying.

The Hon. C.J. Sumner: I did.

The Hon. K.T. GRIFFIN: You did not listen to what I was saying. When the matter is presented to the jury that makes the decision whether or not there is a belief sufficient and that there was, therefore, a basis for the accused to believe that he or she was acting in self-defence, the judge will have to instruct the jury to determine whether the belief was actually held or whether it is a belief that was conjured up after the event. The decision of the jury determines whether the accused is genuine or not genuine in asserting that, at the time of the act of defence, the accused actually had a belief, even if it were a mistaken belief.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: No, that is not right. The honourable Attorney-General has referred to a couple of texts.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: Of course I did: I do not resile from that. In the review of Commonwealth criminal law, in the interim report of the Gibbs committee, reference is made to Smith and Hogan Criminal Law in relation to the English law. That says:

The general principle . . . is that the law allows such force to be used as is reasonable in the circumstances of the particular case: and, for the purposes of offences requiring *mens rea*, what is reasonable is to be judged in the light of the circumstances as the accused believed them to be, whether reasonably or not.

The Queensland and Western Australian codes use the word 'believe' with no qualification. Section 46 of the Tasmanian Criminal Code, in very simple terms and used by the select committee as the basis for its examination of the law of self-defence—and obviously relied upon by the committee—provides as follows:

A person is justified in using, in the defence of himself or of another person, such force as, in the circumstances as he believes them to be, it is reasonable to use.

Section 41 of the New Zealand draft Crimes Bill provides:

Every person is justified in using, in self-defence or the defence of another, such force as, in the circumstances as that person believes them to be, it is reasonable to use.

The United Kingdom draft code prepared by the United Kingdom Law Commission provides that a person does not commit an offence by using such force as in the circumstances which exist or which he believes to exist is immediately necessary and reasonable to take the preventive action. There is a further clause that, again, relates to a belief. In the Gibbs committee's own draft, which is appended to the report, clause 3 *(y)* provides:

It is a defence to a prosecution for an offence if the defendant proves that, in the circumstances that existed at the time or that the defendant believed to exist at the time, the relevant act was done, using such force as in those circumstances was immediately necessary and reasonable.

It proceeds from there. My concern is that if in the context of this Bill we seek to use the description 'genuine belief', it may cloud the issue as regards the ordinary people to whom Mr Groom has been referring in his discussions as wanting some clear expression of the law. I should have thought that the amendments the Council has previously considered and agreed to make it perfectly clear.

If the issue is clouded by the use of the word 'genuinely' it must do some work in the eyes of the judge who ultimately has to instruct the jury.

The Hon. C.J. Sumner: We have already conceded that.

The Hon. K.T. GRIFFIN: It has to do some work so one has to ask: in what way does it qualify the belief? I come back to what the Hon. Mr Gilfillan says: if it is a belief then it does not matter if it is a mistaken or unreasonably held belief; it is a belief, and what the accused has to establish to the satisfaction of the jury is that he or she holds that belief.

The Hon. T. Crothers: What about if it is a belief of convenience?

The Hon. K.T. GRIFFIN: Then that is a matter for the jury.

Amendment negatived; motion carried.

STAMP DUTIES (ASSESSMENTS AND FORMS) AMENDMENT BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 2479.)

Clause 4—'Statement to be lodged by registered person'.

The Hon. R.I. LUCAS: I move:

Page 1, lines 26 and 27—Leave out 'in a manner and form approved by the Commissioner a statement' and substitute 'a statement in the prescribed form'.

This suggested amendment is consequential on the first amendment.

Suggested amendment carried.

The Hon. R.I. LUCAS: I welcome the statement made by the Commissioner of Stamps as read into the record by the Attorney-General earlier. In relation to the discount factor which the Commissioner of Stamps negotiates with individual rental firms and which I indicated varied sometimes between nought and 82 per cent (with the two examples I gave of large firms being between 25 per cent and 45 per cent), that discount factor relates to costs that the Commissioner of Stamps agrees can be cost apportioned to keep goods in a hireable condition.

The Hon. C.J. SUMNER: Yes.

Clause as amended passed.

Clause 5—'Amounts to be included in statement.'

The Hon. R.I. LUCAS: As described to my office, in the case of one large rental firm, when we talked about the discount factor (which in this case was 25 per cent), it said:

These charges do not include the cost of deliveries, replacement of broken parts, collection or the sale of ancillary items such as serviettes and paper plates.

Will the Commissioner confirm through the Attorney-General that those sort of items, in the case of some large rental companies (and I will not name them), are an accurate

description of some of the items that comprise the discount factors?

The Hon. C.J. SUMNER: The answer so far as I can give it is 'not exactly'. I am advised that delivery would not be within the terms of the servicing cost deduction. It is extremely difficult to give a specific answer without knowing all the facts of the case. I am not able to give a completely affirmative answer to the proposition put by the honourable member.

The Hon. R.I. LUCAS: I accept the difficulty and I do not want to name the company in this debate. For example, would cleaning, replacement of broken parts or maintenance come within the Commissioner's understanding of 'keeping goods in a hireable condition'?

The Hon. C.J. SUMNER: I am advised that it would.

The Hon. R.I. LUCAS: I understand that at a very late stage the Hire and Rental Association of Australia (SA) became aware of this amending Bill and has indicated that it was concerned that it had not been consulted by the Government prior to the introduction of the legislation. Obviously, I am not in a position to know with which organisations the Government consulted, and that is not the purpose of my question. Late this afternoon I received a suggested amendment from the association to follow on directly from this clause, and I want to place on record the suggested amendment and the reason why the Liberal Party has decided not to proceed with it. The association wanted Parliament to consider inserting the following amendment:

Insert after paragraph *(d)* the following paragraph:
and
(b) and are for the normal servicing or handling of rental equipment due to normal customer fair wear and tear but not for sales, abnormal loss or abuse or optional transport which are not dutiable.

I discussed that amendment at a late stage with Parliamentary Counsel and others, and I believe that the amendment would act in a completely reverse way to what they intend; that is, as I have now had placed on the public record by the Commissioner, they have already had, through this use of the negotiated discount factor with the Commissioner, discounts for normal servicing and wear and tear or for keeping their goods in a hireable condition. That is already a discount from the rent figure upon which they pay the 1.8 per cent duty.

If the Liberal Party and, indeed, the Parliament was to agree to this amendment, it is my view that it would act in completely the opposite direction to what the rental companies to whom I have spoken would wish. In effect, it would add to the rental figure the normal servicing or handling of rental equipment requirements.

Therefore rather than, as is the current case, not paying duty on servicing and wear and tear, the amendment would result in rental companies having to pay duty on those factors on which they do not currently pay duty, if members can understand that at this late stage. Will the Attorney-General indicate whether the Commissioner of Stamps or his advisers agree with that assessment of the effect of that potential amendment?

The Hon. C.J. SUMNER: Yes.

The Hon. M.J. ELLIOTT: This is an appropriate moment to make these comments. After making my second reading contribution last evening, I had further contact with some people in the Hire and Rental Association, and I will deal with some of the concerns they raised, which are relevant to clause 5. They claimed that they were not contacted by the State Taxation Office about this amending Bill until after it had been through the House of Assembly. I am told that earlier this week a hastily arranged meeting was held between the association and officers of the State Taxation Office. However, members of the association tell me that they were not furnished with all the amendments within this Bill, and that the State Taxation Office's intention for this meeting was merely to discuss the practical application of the amendments rather than the amendments themselves. That is a matter of some concern and, unfortunately, this is what happens when legislation comes in fairly late in the session. In fact, this is the last day before we rise for some months.

I would like some matters clarified, some of which I have not addressed by amendment at this stage. First, there is the question of what happens if company B rents backhoes to the public but is occasionally caught with none in stock. When this occurs, company B rents a backhoe from company A and then rents it to a customer. I would like clarification as to whether duty is payable at each step by both companies A and B or only at the point at which equipment is rented to a customer.

The Hon. C.J. SUMNER: Duty is payable on each.

The Hon. M.J. ELLIOTT: I would suggest that is a fairly unreasonable thing to do. It is a bit like having sales tax applied twice. In fact, at the end of the day, there is really only one rental and one user of the device. At this stage, I ask that the Commissioner of Stamps look at this matter. I am not sure whether it could be fixed later by way of a ruling, but I think it is a matter that requires addressing.

The Hon. R.I. Lucas: I think a Bill will be introduced in the autumn session.

The Hon. M.J. ELLIOTT: That will give us a chance to look at that matter. If that is the case, perhaps it can be dealt with then. Plainly, it is an unreasonable thing to do. If the Minister gives an undertaking that the matter will be looked at then, I will accept that at this stage, particularly if the legislation is going to be open in just a few months.

Clause passed.

New clause 5a—'Matter not to be included in statement.'

The Hon. R.I. LUCAS: I move:

Page 2, after line 6—Insert new clause as follows:
Matter not to be included in statement
5a. Section 31*l* of the principal Act is amended by inserting after paragraph *(a)* of subsection (1) the following paragraphs:
(b) a transaction that cannot be directly or indirectly related to the supply or use of goods, or to the acquisition of any rights in relation to goods;
(c) any business of another kind carried on by the registered person;.

In moving this new clause I will address some comments to it and also to the amendment that has been placed on file by the Hon. Mr Elliott on behalf of the Democrats. I will not go over in detail the arguments that I presented during the second reading as to why we need this new clause.

After reading the new clause that the Hon. Mr Elliott has on file, it would appear that he agrees in principle that this provision needs to be inserted. It really is just a question of resolving which is the most appropriate new clause to insert. While we would all prefer our own to be successful, in this case I am not too fussed.

My advice is that the Liberal Party's new clause includes one or two other matters in addition to the matters that are taken into account in the Hon. Mr Elliott's proposed new clause. I want to explain again those additional matters so that the Hon. Mr Elliott will understand our interpretation of the differences and consider his position because, as I said, we are heading down the same path and it is just a question of whether we go a metre or two further.

It is quite clear that both the Democrats and the Liberal Party agree that if, for example, Focus Video is hiring videos and also selling Maltesers, Jaffas, Coca-Cola and other delectable lovelies that people like to consume, we ought to explicitly make clear that they cannot be construed in any

way to be part of the income that is dutiable on Focus Video or any similar video retailer. So in relation to the sale of goods by a rental or hire business, the Democrats and the Liberal Party are in accord.

I will now refer to the advice that the Liberal Party read into the record at the second reading stage to indicate to the Committee the matters not in the new clause that the Democrats have on file but which are included in our new clause. For the benefit of members, the advice was based on a hypothetical small business hiring out paddleboats and selling confectionary, ice creams and soft drinks which had taken the prudent decision to require the person hiring the boat to pay a small fee on account of insurance. The advice says:

> If one of the paddleboats 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.

Because it is the total amount received in respect of the business this advice argues that that would be dutiable, and that would not be included in the Hon. Mr Elliott's proposed new clause. The other matter is where a small business person overpays stamp duty (and I am advised that this occasionally happens). The advice says:

> 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.

Our advice is that the Liberal Party's proposed new clause will pick that up and ensure that duty is not paid in that case. I think the Hon. Mr Elliott would agree that it would be wrong in principle for a small business person to have to pay stamp duty on a refund of overpaid stamp duty from a previous year.

The Government's position is that the Hon. Mr Elliott's argument and the Liberal Party's base argument relating to the sale of goods and the two further examples I have given will not be caught under the provisions of this Bill. I accept the statement by the Commissioner of Stamps that he does not intend to apply stamp duty to the sale of goods or to the other examples that have been given. But, as I indicated earlier, the present Commissioner of Stamps is not immortal. We need to set down in law what we believe the situation ought to be.

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

> Page 2, after line 6—Insert new clause as follows:
>
> 5a. Section 31*l* of the principal Act is amended by inserting after paragraph *(a)* the following paragraph:
>
> *(b)* the sale of any goods (other than where there is an agreement, arrangement or understanding that the person to whom the goods are sold may, at a later time, sell the goods back to the registered person);

The Hon. Mr Lucas is correct in saying that we are heading down the same path. The distinction I make, which is the reason that my suggested new clause does not go as far as the honourable member's, is that the sale of goods is a fairly easy matter to distinguish. It does not cause legal complications. However, the additional matters posed by the Hon. Mr Lucas, which on the face of it are reasonable, may also have the potential for creating a whole set of loopholes, and that is one of the reasons why we are here at present. I know that it is not the intention of the Hon. Mr Lucas, but that may end up being the practical result.

Once again, this matter was brought to my attention only in the last seven or eight hours and I am not willing to support the honourable member's suggested new clause because I am not convinced about the practical effect of it. I have some sympathy for it and, if the legislation is reopened in the autumn session, at more leisure—if ever we have such a thing—I would like to examine the matters raised by the Hon. Mr Lucas in more detail. I will not support the Hon. Mr Lucas's suggested new clause. Because I do not know whether the practical effect of the new clause will be to create more loopholes, I do not want to take that risk by supporting it. I do not believe that the Commissioner of Stamps is so rapacious that some of the problems mentioned by the honourable member are actually occurring.

The Hon. C.J. SUMNER: The Government does not believe that either of these suggested new clauses is necessary but, if it has to choose one, it will choose that of the Hon. Mr Elliott.

The Hon. R.I. Lucas's suggested new clause negatived.

The Hon. R.I. LUCAS: I am prepared to support the suggested new clause moved by the Hon. Mr Elliott because it moves down the path that the Liberal Party has adopted. I accept his undertaking that, if there is a problem when the legislation is reopened in the autumn session, we may explore further amendments along the line suggested by the Liberal Party.

The Hon. M.J. Elliott's suggested new clause inserted.

Clause 6—'Default assessments.'

The Hon. R.I. LUCAS: I move:

> Page 2, line 31—Leave out 'amount specified in the notice' and substitute 'of the Commissioner's assessment under subsection (1).

The Hon. M.J. ELLIOTT: To facilitate matters, I am happy with the clause as it is. I do not think that any particular amount is right, but I do not have any difficulty with what the Government is proposing. I shall not be supporting the amendment to this clause.

The Hon. C.J. SUMNER: The Government opposes the amendment.

The Hon. R.I. LUCAS: I was trying to assist the debate by separating the two questions. The first is really the level of the penalty and whether it should be twice. The second amendment relates to the matter to which I referred at some length in my second reading contribution. Potentially, as a result of the drafting of this clause, the Government's amendment would mean that the penalty could end up being six times the amount of the duty originally payable. I understand from the Commissioner of Stamps and the Government's advisers that that was not the Government's intention in the drafting of this Bill. I was seeking to split the two principles. I understand from an earlier discussion with the Hon. Mr Elliott that he was not prepared to support reducing the amount of the penalty; that is, the penalty being twice rather than just the amount. I was trying to separate the two principles and restrict this amendment to this question. I understood that the Government and legal advice available to me accepted the advice of our taxation expert that the practical effect of section 31m (3) and (4) was unintended as the taxpayer could end up having to pay six times the amount of the duty.

I was wondering whether I could clarify this with the Attorney-General. I am sorry that I disappeared whilst everyone said that they would vote against everything. I did not get a chance to explain what I was attempting to do. Parliamentary Counsel advised me that there might be a defect in the way I sought to distinguish the two principles. I want to clarify whether the Government is proposing to oppose both principles. If it is, I will not be too fussed about having a quick discussion again with Parliamentary Counsel to try to clarify it. As I said, I thought there was some possibility of the Government's agreeing that there was a problem with the drafting and was prepared to accept at least the second principle whilst it was not prepared to accept the first principle of reducing the amount of the penalty.

The Hon. C.J. SUMNER: I oppose it.

The Hon. M.J. ELLIOTT: Perhaps I was trying to facilitate matters a little too quickly. I see the point that the Hon. Mr Lucas made. I was not at all perturbed about twice the amount specified in the notice. However, if new section 31m (4) acts in a compounding way upon the penalty imposed in new section 31m (3), the Hon. Mr Lucas would be right: double double is fourfold and, added to the existing double, is sixfold. Mathematically, what Mr Lucas said might be correct, unless something else has been missed, which I am sure is not intended. While we are trying to hurry things up as much as we can, we must make sure that we do not make a major blunder in the process. I seek the Attorney's response in that matter.

The Hon. R.I. LUCAS: My attempts to separate the two principles was poorly done—and that was my fault, not Parliamentary Counsel's fault. Parliamentary Counsel has advised me that the way to distinguish the two principles that I want to distinguish is to do it in a different way. I am advised that the only change I would need to make to the circulated amendment is the insertion of the word 'twice' in the second line. Parliamentary Counsel advises me that that would distinguish the two principles. The Committee, particularly the Hon. Mr Elliott, may not want to support my argument about reducing the penalty 'twice' back to just equal to the amount but may be prepared to accept the argument as to the unintended consequence.

The Hon. C.J. SUMNER: We will accept that.

Suggested amendment carried.

The Hon. R.I. LUCAS: I move:

Page 2, line 34—Leave out 'twice'.

I accept that the numbers will be against me on this.

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

Suggested amendment negatived; clause as suggested to be amended passed.

Clauses 7 to 9 passed.

Clause 10—'Duty on policies effected outside South Australia.'

The Hon. R.I. LUCAS: I move:

Page 3, lines 11 to 13—Leave out the clause.

This amendment is consequential on earlier successful amendments.

The Hon. M.J. ELLIOTT: The Democrats oppose the clause.

Suggested amendment carried, clause as suggested to be amended passed.

Clause 11 passed.

Clause 12—'Default assessments.'

The Hon. R.I. LUCAS: I move:

Page 4, line 4—Leave out 'twice the amount specified in the notice' and substitute 'an amount equal to twice the amount of the Commissioner's assessment under subsection (1)'.

This is consequential on the amendments to clause 6.

The Hon. C.J. SUMNER: Yes.

Suggested amendment carried; clause as suggested to be amended passed.

Clause 13 passed.

Clause 14—'Returns to be lodged and duly paid.'

The Hon. R.I. LUCAS: I move:

Page 4, lines 17 to 75—Leave out this clause.

There was earlier successful opposition to similar principles.

The Hon. C.J. SUMNER: Aye.

Suggested amendment carried; clause as suggested to be amended passed.

Clause 15—'Transfer of marketable securities not to be registered unless duly stamped.'

The Hon. R.I. LUCAS: I move:

Page 4, lines 26 to 28—Leave out the clause.

Suggested amendment carried; clause as suggested to be amended passed.

Remaining clauses (16 and 17) and title passed.

Bill read a third time and passed.

CRIMINAL LAW CONSOLIDATION (SELF-DEFENCE) AMENDMENT BILL

The House of Assembly intimated that it did not further insist on its disagreement to amendments Nos 4 and 5 made by the Legislative Council, and did not further insist on its disagreement to amendments Nos 1 to 3, but had made the following amendments thereto:

Legislative Council's Amendment No. 1

Page 1, lines 19 and 20 (clause 2)—Leave out 'has a genuine belief that the force is reasonably necessary to defend himself, herself or another' and insert 'believes that the force is necessary and reasonable—

(i) to defend himself, herself or another,

or

(ii) to prevent or terminate the unlawful imprisonment of himself, herself or another;'.

House of Assembly's Amendment thereto

Before the word 'believes' insert 'genuinely'.

Legislative Council's Amendment No. 2

Page 1, lines 22 to 25 (clause 2)—Leave out 'by using force, not amounting to the intentional or reckless infliction of death or grievous bodily harm against another if that person has a genuine belief that the force is reasonably necessary' and substitute 'if that person, without intending to cause death or being reckless as to whether death is caused, uses force against another believing that the force is necessary and reasonable'.

House of Assembly's Amendments thereto

Before the word 'believing' insert 'genuinely'.

Legislative Council's Amendment No. 3

Page 2, lines 1 to 6 (clause 2)—Leave out this subsection and substitute:

'(2) Where—

(a) a person causes death by using force against another believing that the force is necessary and reasonable for a purpose stated in subsection (1);

(b) that person's belief as to the nature or extent of the necessary force is grossly unreasonable (judged by reference to the circumstances as he or she believed them to be);

and

(c) that person,if acting for a purpose stated in subsection (1) *(b)*, does not intend to cause death and is not reckless as to whether death is caused,

that person may not be convicted of murder but may if he or she acted with criminal negligence be convicted of manslaughter.'

House of Assembly's Amendments thereto.

Before the word 'believing' insert 'genuinely'.

Before the word 'believed' insert 'genuinely'.

Consideration in Committee.

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

That the Legislative Council agree to the amendments made by the House of Assembly to its amendments.

The situation is that the House of Assembly has agreed with all the amendments moved by the Legislative Council, with the exception of the dispute about whether the word 'genuinely' should be inserted before the word 'believes'. Previously, the House of Assembly disagreed with all the Council's amendments; so, some progress has been made.

I hope that the Hon. Mr Gilfillan will now be persuaded by good sense and persuasive argument to agree with my motion, which I will not debate again, except to say that progress has been made between the Houses in that the House of Assembly has now accepted all the amendments—

The Hon. J.C. Burdett: Except the one that matters.

The Hon. C.J. SUMNER: But last time it accepted none of the amendments made by the Legislative Council. The House of Assembly has now accepted all the amendments except that it has inserted in the relevant place the word

'genuinely' before the word 'believes'. I ask members to support my motion.

The Hon. K.T. GRIFFIN: I move to amend the Attorney's motion as follows:

Delete all words after 'Council' and insert 'insist upon its amendments'.

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

Amendment carried; motion as amended carried.

STAMP DUTIES (ASSESSMENTS AND FORMS) AMENDMENT BILL

Later:

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

CRIMINAL LAW CONSOLIDATION (SELF-DEFENCE) AMENDMENT BILL

The House of Assembly requested a conference, at which it would be represented by five managers, on the Legislative Council's amendments to which it had disagreed.

The Legislative Council agreed to a conference, at which it would be represented by the Hons J.C. Burdett, M.S. Feleppa, I. Gilfillan, K.T. Griffin and C.J. Sumner.

[*Sitting suspended from 11.13 p.m. to 12.35 a.m.*]

At 12.35 a.m. the following recommendations of the conference were reported to the Council:

That the Legislative Council do not further insist on its disagreement to the House of Assembly's amendments to the Legislative Council's amendments Nos 1 to 3.

Consideration in Committee of the recommendations of the conference.

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

That the recommendations of the conference be agreed to.

The only issue in dispute at the conference was whether the phraseology in the Act should be 'genuine belief' or just plain 'belief'. The issue has been fully discussed in this Chamber as the amendments have gone to and fro, and I will not repeat all those arguments, which are well known, except to say that the House of Assembly felt that its original formulation, which contained the words 'genuine belief', should be maintained in the Bill. It considered that it had compromised significantly by accepting the Legislative Council's amendments which were moved by the Hon. Mr Griffin.

It is fair to say that the Government in this place was prepared to accept the Hon. Mr Griffin's amendment as he obviously had done a considerable amount of work on it, and the basic structure of his amendment was acceptable. But there was this one sticking point, on which the House of Assembly insisted, and accordingly we now have this recommendation because the managers, after discussion, did not feel that the Bill should fail. As this was the only point of difference it was agreed that the managers should recommend to their respective Houses that the word 'genuine' should be retained in the Bill.

In support of this, it was pointed out that this concept has been in the legislation in one form or another since the select committee reported. The House of Assembly's select committee directed its attention to this issue and decided that 'genuine belief' should be included. When the matter was debated in the House of Assembly this issue was not touched on by any member in the Lower House. Some amendments were moved by Liberal members in another place, but they did not move to delete the concept of genuine belief.

This concept was in the Bill until today when the Hon. Mr Griffin's amendment was moved and accepted in this place. Whatever arguments one might have about the purity of the language, the fact is that very eminent jurists over a period of time have considered this matter, in particular, in the two cases that have been relied on as a basis for the codification. The judgment in Beckwith's case in the United Kingdom referred to 'genuine belief' or 'genuinely believes', as indeed Justice Wells did in Coleman's case.

The conference would want to make it quite clear that there was no significant difference, if any, in intention. It is intended that it be the belief of the individual who is under attack that we are talking about, and that is a subjective belief, not a belief determined by relation to some objective test of reasonableness. That was stated by me during the Committee stage and I reaffirm it. It was clear from the conference—and the recommendation with which we have come back to the Council does not detract from the proposition—that it is the actual belief of the person who is under attack and how that person feels, not whether that belief is reasonable by reference to the test of an ordinary person in the community.

As I said, the debate was about that phrase. In the end, for the reasons that I have outlined, I think that what we have is satisfactory. Certainly if we look at the big picture and remove this unfortunate dispute which has occurred in the past four or five hours, the passage of this Bill will end a process which began some time ago, which was provoked by community concern and, to some extent, community misunderstanding about the law of self-defence. It will obviously be tested through the courts, but I believe we have codified it in a satisfactory way. That process has involved a number of people who should be commended for the work that they have done on it. The Hon. Terry Groom in another place, as Chairman of the select committee—

Members interjecting:

The Hon. C.J. SUMNER: Not the honourable, not yet, but he is working on it. Mr Groom, the member for Hartley, who chaired the select committee and the other members of the select committee should be thanked for their efforts. Also, in this Chamber, the Hon. Mr Griffin, who made a significant contribution to the final form of the Bill, should be thanked. Although it is not usual, I should like to thank my adviser, Mr Matthew Goode, and also Parliamentary Counsel, who have laboured long and hard over this issue during the past few months, Mr Geoff Hackett-Jones, QC, and Mr Richard Dennis.

The Hon. K.T. GRIFFIN: It is correct to say that we have made some substantial amendments to the Bill that was received from the House of Assembly. Those amendments do significantly clarify a number of the issues that were raised by those who had some criticism of the Bill over the period of time that it was under consideration. Now we will have a Bill that does provide a clear expression of the law for ordinary people as well as for the courts. We have achieved that. That was one of the reasons why, at the conference, the managers from the Council took the view that, if it was a matter of accepting the word 'genuine' as a qualification or explanation of 'belief' as against losing the Bill, the former position was the preferable course to take.

That does not mean that we resile from the views that we expressed about the desirability of leaving the word

'genuine' in the Bill in relation to 'belief' or of removing it. I still hold the view that it is inappropriate but, as I say, it is there because otherwise there is a strong possibility that the Bill would be lost, and after all the work that had been done on it that would not be appropriate.

I need to refer to two matters. One of the arguments in favour of leaving the word 'genuine' in the Bill—as one of the members of the former select committee, Mr Groom, has noted on a number of occasions—was to provide guidance to little old ladies. My immediate response to that is that I do not think it will provide guidance: it may tend to create a problem rather than provide enlightenment. But, notwithstanding that, it was an argument that was certainly used in favour of leaving it in the Bill.

Another argument in favour of leaving it in—apart from the fact that the select committee had had it in there right from the start—was to distinguish the bizzare beliefs from other beliefs. I do not share that view and the Attorney-General obviously does not share that view either, from what he said. I interpret the word 'genuine' as meaning the actual belief and, if the actual belief was bizzare, then, nothwithstanding that, if it is actually held, it is still a belief. If the person reacted on the basis of that belief, even though mistaken or bizarre, it is possible that the defence would still be available, although, if the reaction was unreasonable, then other provisions in the Bill would accommodate that in the criminal process.

'Genuine belief' is really used by the courts in a commentary style rather than by Acts of Parliament as an emphasis that it is the actual belief, rather than any other sort of belief—if one can have any other sort of belief. As the Hon. Mr Gilfillan has argued—and I would share the view he has put—a belief is a belief is a belief. Like the Attorney-General, I do record my appreciation: I did it earlier in debate, but I repeat my appreciation for the support that was given by Mr Hackett-Jones and Mr Dennis, Parliamentary Counsel, and also by Mr Matthew Goode.

I also appreciate the willingness of the Attorney-General to allow Mr Goode to have unsupervised discussions with me in an attempt to reach some reasonable proposition on this Bill. Notwithstanding my concern about the insertion of the word 'genuine', I support the recommendations of the conference.

The Hon. I. GILFILLAN: I support the recommendations of the conference. There has been no change in my position, nor, I believe, has there been a change in the position of the majority of members regarding the use of the words 'genuine' or 'genuinely' in the context of the Bill. It is important that the drafting and the contents of the legislation be scrutinised as carefully as possible in terms of accurate use of the language, and there has been no change in my attitude to that. I believe that as the legislation comes into effect we will see, in the fullness of time, the futility of the use of the words 'genuine' and 'genuinely'.

Although the intention that Mr Terry Groom and others have expressed in wishing to qualify 'belief' in some way is a reasonable aim, it is not achieved by the use of the words 'genuine' or 'genuinely'. However, the price of insisting on an appropriate and sensible use of the words or of having them deleted in the way they were included, and are still included, in the Bill would be, because of the intransigence of others, at the cost of losing the Bill. That is too high a price to pay. Therefore, I indicate the Democrats' support for the agreement, and that enables the Bill to be passed. However, it is flawed in its wording, and I hope that in future Bills will not contain the words 'genuine' or 'genuinely' in inappropriate circumstances, such as in this Bill.

The Hon. J.C. BURDETT: I support the motion. I also support what the Hon. Mr Gilfillan has just said, namely, that because of some person's intransigence, it was not possible to negotiate—

Members interjecting:

The Hon. J.C. BURDETT: It was not: there was no negotiation whatsoever. It was a question of losing the Bill, and that was it. There was not any kind of attempt on anyone's part to negotiate. I believe that what we have done is wrong. However, because of the benefits of the rest of the Bill and because the alternative was to lose the Bill, I most reluctantly supported the position taken by the other managers on behalf of the Council.

As to the question of 'genuinely believing', like the Hon. Mr Gilfillan and the Hon. Mr Griffin, I certainly do not believe that the word 'genuinely' adds anything to an Act of Parliament. No-one at any time has been able to suggest that any other Act of Parliament, in this context and in relation to this issue, includes the word 'genuinely'. It does not appear in any other Act. There were—

Members interjecting:

The Hon. J.C. BURDETT: Yes. Two cases have been cited repeatedly in which the words 'genuine belief' or 'genuinely believing' were used in directions to the jury. That is a different matter altogether. A direction to the jury or the decision of an appellate court is discursive. It relates the particular facts of the case to the jury regarding the matters in hand.

To use those words in that context is one thing: to use them in an Act of Parliament, which has to be precise in its wording, is another thing altogether. The problem I have with it is that, in accordance with the canons of statutory interpretation, in the use of the word 'genuinely' before 'believing', the courts will say, when they have to interpret it, that word 'genuinely' has to be given some work to do, so it has to change the question of belief. What the Hon. Mr Gilfillan said is perfectly correct: a belief is a belief is a belief, and that implies genuineness anyway. If the superfluous word 'genuinely' is added, the courts will say that that does have to be given some work to do. It has to mean something; it was put there for some reason, and I do not know what the outcome of that will be. I was not prepared—

The Hon. M.J. Elliott: Do you think the courts will work out that it is stubborness?

The Hon. J.C. BURDETT: I do not know about that.

The Hon. C.J. Sumner: It would be all right if they could read *Hansard*.

The Hon. J.C. BURDETT: They cannot read *Hansard*. I was not prepared to lose the Bill and, for that reason alone, I supported the decision of the Council managers, but I believe that the Bill is flawed.

Motion carried.

Later:

The House of Assembly intimated that it had agreed to the recommendations of the conference.

ADJOURNMENT

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

That the Council at its rising, adjourn until Tuesday 11 February 1992 at 2.15 p.m.

I use this opportunity to thank members for what I think has been a productive session of the Parliament and this Council in particular since we resumed in August. Apart from a minor hiccup this evening, there has been a considerable spirit of cooperation, both in the approach taken to the legislation itself and the substance of the legislation and

also in the manner in which the legislation has been dealt with. I would like to thank members opposite for the cooperation they have shown, particularly in the past three or four weeks, and I also thank the Australian Democrats representatives for their assistance, which was quite reasonable until just a few hours ago.

The Hon. M.J. Elliott: It was genuinely reasonable.

The Hon. C.J. SUMNER: To be serious, I would like to thank all members. It would be unfair of me to select any members in particular for commendation or otherwise. There was a significant spirit of cooperation to deal with the legislation, particularly over the past few weeks, and I would genuinely like to thank members for that.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: Interjections are out of order, particularly in a speech such as this. I would also like to take the opportunity to thank everyone in Parliament House for their work. I will not identify each of them individually: everyone knows whom I am talking about. I refer to the staff who work in and about Parliament House. I wish all the staff and members a merry Christmas and a happy and prosperous 1992. I conclude by saying that I hope *Hansard* has enjoyed its party which, regrettably, I was unable to attend.

The Hon. R.I. LUCAS (Leader of the Opposition): I join with the Attorney-General in speaking to this motion. In particular, I thank the table staff and the messengers for the work they do for all members in this Chamber. I also join with the Attorney in thanking *Hansard*, the catering and library staff, and Parliamentary Counsel, etc. As the Attorney has said, they are too numerous to mention individually, but they make our job much easier and help us to survive the rigours of the parliamentary session. Certainly, it is somewhat easier at the start of the session, but sometimes things tend to get a bit tetchy towards the end of the session with the stresses, strains and pressures of having to do the job that we are here to do and the staff assist us in every possible way. I am sure that all members will join with me in thanking them for the work they do.

The Liberal members thank you, Mr President, for your reasonable humour on most occasions and for not throwing out the Hon. Legh Davis on any occasion during this session or, indeed, the Minister for the Arts and Cultural Heritage because of her persistent interjections. We believe genuinely—the 'in' word of this particular evening—that the way you have handled proceedings in this Parliament has assisted the productive work that we all do in this Chamber, and long may it continue, at least until the end of your period in Parliament.

I thank personally the Leader of the Government (the Attorney-General), the Leader and Deputy Leader of the Australian Democrats and also the Whip and respective shadow Ministers in the Australian Democrats for their cooperation with Liberal members in ensuring the productive work of this session. I thank also the Government Whip (the Hon. Carolyn Pickles) and the Opposition Whip (the Hon. Dr Bob Ritson). It may well be that the Government Whip will have another position in the next session. Whips sometimes do not get the credit they deserve. They make for the effective functioning of this Council. We have had no problems with divisions or pairs, and when members have needed to attend other functions the Whips have managed to be able to organise that. I thank them for their efficient operation.

Finally, I join with the Attorney in thanking all members in the Chamber for their cooperation and assistance in ensuring, as the Attorney has indicated, a very productive session. I wish all members and staff a merry Christmas and a happy and productive 1992.

The Hon. I. GILFILLAN: On behalf of my colleague, who I think might have made the *Hansard* party, and myself, I would like to join in conveying thanks for and appreciation of those who work in this place. I would like to mention *Hansard*, but obviously I cannot go through them by name. I thank them for the pleasant patience with which they have taken down the proceedings not only in this place but in the select committees on which I have served. I particularly wish to thank the messengers who tirelessly and with good humour care for our wants in and around in the precincts of the Chamber.

I should like to mention Todd Mesecke, who has been here as the junior for 12 months. He has achieved immortal fame as far as I am concerned by having the fastest time in my Corporate Cup team. He will be sadly missed next year. I will not find too many people who can do 16.48.

The Hon. T. Crothers: I'm going back into training.

The Hon. I. GILFILLAN: I'll have you, although there will be room for improvement. It is impossible to name everyone, but I should like to mention the library staff and research people who have been extremely helpful to us, as well as the staff of the refreshment room, the kitchen and the dining room, the areas that have cared for our physical wants very pleasantly. I do think that the standard has improved. Finally, I should like to thank the clerks and assistant clerk for their efficient and patient work. They seem to have disappeared; I think they are embarrassed at all this praise. I should like to thank all members for what has been on the whole a good natured and productive session of Parliament. I do not suppose we will ever get through a session without there being an occasional flurry of dispute with a little snapping and snarling, but we have achieved a calmer and more measured end to this session than to any I can remember.

With some faintly disguised modesty, I think that this may have arisen from the fact that one day I asked the Attorney-General, 'What Bills need to be done?' That prompted him actually to make some decisions, so we got on pretty well. They are not often thanked, but the media people, who have sat patiently through hours and hours of what must from time to time be somewhat tedious, deserve to be thanked. Thank you, Mr President, for your very benign, efficient and good natured presiding over the proceedings. It has done much to keep the humour on the good rather than the bad side. I wish all members a very enjoyable, relaxing break.

The PRESIDENT: I should like to take a few minutes to wish all members a very prosperous and happy new year as well as a very enjoyable Christmas. I think that the Council has operated in a reasonably successful manner, and I feel that, while members have had the toing and froing in the Council, that is normal. I have tried to operate this Chamber with a human face, as I do not believe it can operate under sterile conditions.

The interplay between members helps to make this Council what it is. Some of that gets a bit willing, but it never becomes vicious so I have been prepared to let it run. It has never had anything vicious in it that I would stomp on straight away, and I think the members deserve a certain amount of credit for that. I should also like to offer my compliments to all the staff. It has been a very trying year for those who have been on committees, attempting to administer staff, facilities and conditions. I do not know how our relationship stands with the staff: I just hope that

they appreciate the goodwill I wish to extend to them at this time of the year. I look forward to seeing everyone in the new year after a break.

Motion carried.

At 1.10 a.m. the Council adjourned until Tuesday 11 February 1992 at 2.15 p.m.