LEGISLATIVE COUNCIL

Thursday 27 February 1992

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

PAPER TABLED

The following paper was laid on the table:

By the Attorney-General (Hon. C.J. Sumner)—

Commissioner for Equal Opportunity—Report, 1990-91.

MINISTERIAL STATEMENT: STATE BANK

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

Leave granted.

The Hon. C.J. SUMNER: This morning in Executive Council the Governor approved the extension of the reporting deadlines of both the Royal Commissioner and the Auditor-General inquiring into the financial problems of the State Bank. The Auditor-General, Mr Ken MacPherson, will now be required to report on all terms of reference by 30 September 1992. The Royal Commissioner, Mr Samuel Jacobs, will now make his final report by 30 November 1992.

I have been advised that an interim report is proposed to be made by the Royal Commissioner on term of reference 1 as soon as the evidence relating to that term has been concluded, and pending receipt of the Auditor-General's Report. As far as we can ascertain at this stage, the Royal Commissioner anticipates that the hearings of the royal commission should resume by 24 March 1992, certainly no earlier than that date. Given this likely resumption date, the interim report should be available by 30 September 1992.

The senior counsel assisting the royal commission and the Auditor-General have also had discussions, and both have agreed that the prompt flow of information to the commission from the Auditor-General at its request is critical to the successful adherence by the Royal Commissioner to the reporting date. The senior counsel has also confirmed that the information flow will enable the commission to take steps to avoid any significant overlap in the work being carried out by the commission and the Auditor-General's inquiry.

One other matter that needs to be addressed is the question of term of reference 3. On 26 January this year, I received a letter for representatives of the State Bank requesting that term of reference 3 be removed from the Royal Commissioner, given the inevitable damage of public confidence the hearings were having on the bank. The suggestion that term of reference 3 be removed from the royal commission and given to the Auditor-General was discussed with Mr Jacobs and the decision was made that term of reference 3 would not be dropped from the royal commission. It will be considered and reported on by the royal commission as originally planned.

It is within the interests of everyone concerned in these two parallel inquiries into the State Bank that they be concluded as soon as possible. Many of the delays of these inquiries had not been foreseen, nor could they have been when the original deadlines were announced on 4 March last year. There is not and never has been any intention of this Government to interfere in the running of the royal commision. It has always been the Government's intention to ensure that an open and comprehensive inquiry into the State Bank financial problems be conducted. I do not expect further extensions to be sought.

QUESTIONS

FREEDOM OF INFORMATION

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

Leave granted.

The Hon. R.I. LUCAS: Yesterday in this Chamber the Attorney-General strongly defended the right of ministerial officers to be involved in the processing and vetting of freedom of information requests from members of Parliament. In fact, the Attorney-General said that he would expect ministerial officers to be involved and that he could see nothing wrong with their involvement in this oversight of freedom of information requests. When the freedom of information legislation was debated in this Council on 19 March 1991, I asked the following question of the Attorney-General:

> I should like to put a question to the Attorney-General. In the anticipated processing of FOI applications by Ministers, does the Attorney-General envisage that requests for information from departments will have to be processed in some way through ministerial officers—that is, receiving the oversight of the Minister's ministerial officer—before approval can be given for the release of information or at least advice to the Minister's office of requests by certain categories of people?

The response from the Attorney-General (Hon. C.J. Sumner) was, 'No'. The Attorney-General's response was clear and unequivocal and conflicts with his statement to this Council yesterday. My question to the Attorney-General is: why did he deliberately mislead the Parliament last year on the subject of the role of ministerial officers in the processing of freedom of information requests?

The Hon. C.J. SUMNER: You're a real screwball.

The Hon. R.I. Lucas: Why did you mislead the Parliament?

The Hon. C.J. SUMNER: Well, I haven't misled the Parliament. If the honourable member read what he said last year (I do not have it in front of me) and gave it to me, I could perhaps give him a fuller response. The question he asked last year, as I understood it, was whether there would be a formal process whereby requests would have to go through ministerial officers and all be vetted by ministerial officers, and so on. My answer to that question was 'No'. The question was:

> . . . does the Attorney-General envisage that requests for information from departments will have to be processed in some way through ministerial officers—that is, receiving the oversight of the Minister's ministerial officer—before approval can be given for the release of information or at least advice to the Minister's office of requests by certain categories of people?

The answer is 'No'. That is correct, Mr President: there is no formal structure or system in place as far as I am aware—

The Hon. R.I. Lucas: Tell the truth for once.

The Hon. C.J. SUMNER: —whereby—

The PRESIDENT: Order!

The Hon. C.J. SUMNER: What are you suggesting?

The Hon. R.I. Lucas: I said, 'Why don't you tell the truth for once?'

The Hon. C.J. SUMNER: What are you suggesting?

The Hon. R.I. Lucas: I said, 'Why don't you tell the truth for once?'

The PRESIDENT: Order!

The Hon. C.J. SUMNER: On a point of order, Mr President. I take exception to that remark. I seek a withdrawal of it and I seek an apology. It is totally contrary to Standing Orders.

The PRESIDENT: It is, and I uphold—

The Hon. C.J. SUMNER: Quite frankly, Mr President, I am sick—

The Hon. R.I. Lucas: Why don't you tell the truth?

The Hon. C.J. SUMNER: That, Mr President, is a reflection on an honourable member—

The PRESIDENT: Order! The Hon. Mr Lucas has been asked to apologise and withdraw.

The Hon. C.J. SUMNER: —and I want, Mr President, a withdrawal and an apology.

The PRESIDENT: Yes.

The Hon. R.I. Lucas: No, I will not apologise.

The PRESIDENT: I am sorry. I am requesting that the honourable member withdraw and apologise.

The Hon. R.I. Lucas: On what basis?

The PRESIDENT: That you are virtually saying that what the Attorney-General said is a lie. It is unparliamentary. You said, 'Why don't you tell the truth for a change?', implying that the Attorney-General tells nothing but lies. I said that that was unparliamentary—

The Hon. R.I. Lucas: Under which Standing Order?

The PRESIDENT: Under Standing Order 208, which provides:

> If a member . . .
> *(b)* refuses to conform to any Standing or other Order of the Council, or to regard the authority of the Chair . . .

An apology and a withdrawal have been requested. I uphold that, and I ask the honourable member to apologise and withdraw that remark.

The Hon. R.I. LUCAS: Mr President, your ruling is made under Standing Order 208, which provides:

> If any member persistently and wilfully—
> *(a)* obstructs the business of the Council—

I take it that you, Sir, are not ruling on that part of the Standing Order—

The PRESIDENT: No, I am going on to paragraph *(b)*.

The Hon. R.I. LUCAS: The Standing Order continues:

> or
> *(b)* refuses to conform to any Standing or other Order of the Council, or to regard the authority of the Chair,

or if any member, having used objectionable words, refuses either to explain the same to the satisfaction of the President, or to withdraw them and apologise for their use—

The PRESIDENT: That is correct.

The Hon. R.I. LUCAS: Mr President, let me seek to explain the same to the satisfaction of the President, as allowed under Standing Order 208.

The PRESIDENT: Right.

The Hon. R.I. LUCAS: Do you accept that, Mr President?

The PRESIDENT: Yes, I accept that you can explain that.

The Hon. R.I. LUCAS: Then, of course, I will respect the authority of the Chair if I cannot explain to the satisfaction of the President. I said to the Attorney-General, 'Why don't you tell the truth?'

The Hon. Anne Levy: 'For a change'!

The Hon. R.I. LUCAS: For a change: why doesn't he tell the truth for a change?

The Hon. C.J. SUMNER: Mr President—

The Hon. R.I. LUCAS: Excuse me. I am on my feet. I am seeking to—

The Hon. C.J. SUMNER: On a point of order, Sir, the relevant Standing Order, as the honourable member opposite would or should know, is 193, which provides:

> . . . no injurious reflections shall be permitted upon . . . any member . . . unless it be upon a specific charge on a substantive motion after notice.

That is clearly the Standing Order. I would hope that most members in this place would regard a charge from the Leader of the Opposition that I am not telling the truth and do not tell the truth—which is the implication in his statement—as an injurious reflection on me as a member. Mr President, I am sick and tired of this Leader of the Opposition's nasty, snide remarks about me and other members.

The Hon. R.I. LUCAS: On a point of order, Mr President.

The PRESIDENT: Order! Both members will resume their seats. I am not prepared to uphold the Attorney-General's point of order. I have said that under Standing Order 208 I am prepared to let the Hon. Mr Lucas explain, and if that explanation is not to my satisfaction I will ask him to withdraw and apologise. The Hon. Mr Lucas.

The Hon. R.I. LUCAS: I do not know in what order you would like to take this, Mr President, but I would like to seek a withdrawal and apology from the Attorney-General.

The PRESIDENT: I am not taking that at this stage.

The Hon. R.I. LUCAS: I give notice that I will do so, because under Standing Orders it is an injurious reflection on me for the Attorney-General to refer to me as making nasty and snide comments in this Chamber. I will let you, Mr President, rule on that in a minute. As I said, I will willingly concur with your order, but under Standing Order 208 I want to seek to explain to the satisfaction of the President. Mr President, yesterday the Attorney-General in this Chamber indicated a set of facts in relation to the question about freedom of information, and it is quite clear to anyone in this Chamber and to anyone who takes the trouble to have a look at the statement that the Attorney-General made about that to this Parliament last year, that those statements are in conflict.

If a member of Parliament in this Chamber cannot point out that the statements are in conflict and that on one occasion at least, whether that was yesterday or last year, the Attorney-General was not telling the truth, what you, Mr President, in my submission would be doing would be preventing a member of Parliament being able to put that particular case to the Council. Those statements are in direct conflict: one of them is wrong, whether that be yesterday's statement or last year's statement and, in my submission to you, Mr President, the Attorney-General was not telling the truth. I did not call him a liar, as I know that to be unparliamentary.

The Hon. C.J. Sumner: 'Tell the truth for a change,' is what you said.

The Hon. R.I. LUCAS: He is very sensitive, Mr President. Previously you have ruled that we are not allowed to call the Attorney-General a liar, and in this Council I would not seek to call him a liar—and, Mr President, I did not do that. What I said was quite clear and specific. I did not call the Attorney-General a liar in this Council. But, what I am saying to you is that—

The Hon. C.J. Sumner interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —if you rule that I withdraw and apologise—and I will be happy to submit to your ruling—you will prevent members of Parliament from being able to highlight clear discrepancies in statements of the Attorney-General or any other Minister.

The Hon. L.H. Davis: They simply both can't be right.

The Hon. R.I. LUCAS: As my colleague says, they both can't be right. As I said, I did not call the Attorney-General a liar. I said, 'Why don't you tell the truth for a change,' or words to that effect, as *Hansard* will show. I will accept your ruling, Mr President, but I make the submission under

Standing Order 208 that members of Parliament ought to be able to make those sorts of statements whilst clearly they cannot in this Council call the Attorney-General a liar, even if they wanted to.

The PRESIDENT: I have considered the matter and I am not prepared to concede to your request. I still ask that the Hon. Mr Lucas withdraw and apologise under Standing Order 208. One of the reasons—and I think that this has not been properly explained yet by the Attorney-General—is that from where I sit the assessment that he has or has not told a lie or an untruth has not been substantially proven. Therefore, I am still asking the Hon. Mr Lucas to withdraw and apologise.

Also, I believe that the tenor of debate in the Council is not improved by remarks such as the Hon. Mr Lucas suggesting to the Attorney-General to tell the truth for once. I do not feel that it is fitting for any member on any side of the Council to get into that situation. It brings nothing but disrepute on the Council. I ask the Hon. Mr Lucas to withdraw and apologise.

The Hon. R.I. LUCAS: As always, Mr President, I concur with your ruling, perhaps not happily, but I always accept your rulings and I withdraw and apologise. I indicate that, under Standing Order 193, I find the words 'snide' and 'nasty' as used by the Attorney-General towards me objectionable, offensive and highly disorderly. I seek his withdrawal and apology.

The PRESIDENT: There has been a request for withdrawal and apology on 'snide' and—

The Hon. C.J. SUMNER: In the context of the honourable member's accusation about me, I do not regard the use of the words 'snide' and 'nasty' as objectionable. If that is the situation, there will be many other words used in this Chamber over many years that will now be ruled out of order. The honourable member's imputation to me was one of direct dishonesty. That was his suggestion and that is what I was responding to. What I am putting to you, Mr President, is that the category of accusation of the honourable member opposite—an accusation in effect that I am lying—is in a totally different category from the words that I used, which were 'snide' and 'nasty'. If you are going to rule 'snide' and 'nasty' out of order, it is quite clear that many other words that have been used over my time in Parliament will be ruled out. I do not believe it is a situation in which I should be called upon to either withdraw or apologise.

The PRESIDENT: The Hon. Mr Lucas has the advantage on me. He has the dictionary.

The Hon. R.I. LUCAS: Can I give the dictionary definition of both? 'Nasty' means 'disgustingly dirty, filthy; obscene, delighting in obscenity; disagreeable to smell or taste, unpalatable . . .' There are many other descriptions.

The Hon. M.J. Elliott: Which one do you object to?

The Hon. R.I. LUCAS: At least one of those, anyway—you can take your pick. 'Snide' means 'counterfeit, bogus; insinuating, sneering . . .' They are the words that define 'snide' and 'nasty'. I seek your ruling on it.

The PRESIDENT: If the interpretation of the dictionary—

The Hon. C.J. Sumner: It cannot be all of them.

The PRESIDENT: No, but if it is taken that way, and if I were put in the situation of being called that, I think I would object, and I think an apology and withdrawal in that situation is warranted.

The Hon. C.J. SUMNER: I think you need to check the *Hansard*. I referred to 'snide and nasty remarks'. I did not call the honourable member 'snide' or 'nasty'. I do not believe, in the extreme provocation under which I was put by the honourable member's remarks, which has been developing over the weeks—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: If you look at *Hansard* you will see that I was referring to 'remarks'.

The PRESIDENT: Order! I have made a ruling. I request the Attorney-General to withdraw and apologise.

The Hon. C.J. SUMNER: I am making a further submission on the matter, Mr President. I think you need to check the *Hansard*. If it was the remarks that I was referring to, clearly—

The PRESIDENT: I am putting you under the same rule as Mr Lucas. As provided in Standing Order 208, if you can explain to the satisfaction of the President that the word 'nasty' as defined in the dictionary applies to the honourable member, I will accept it. If you cannot, I ask you to withdraw and apologise.

The Hon. C.J. SUMNER: I am explaining that it was the remarks of the honourable member that were snide and nasty. We can check that from the *Hansard* record. In my view, in that context they are not words that I believe require a withdrawal and an apology to the honourable member. They are in a totally different category from the accusation made by the Leader of the Opposition and I do not see that, in those circumstances, there is a need to withdraw them or apologise. I think you need to check the *Hansard* to see whether or not I made the accusation about him or whether I referred to the remarks that were being made.

The PRESIDENT: I am prepared to uphold the ruling that I made. I want you to apologise and withdraw. With the tenor of debate in the Chamber in mind, I cannot accept the position where one person stands up on one side of the Chamber and defames another, and then withdraws and apologises, but another person gets into the same situation, only to a lesser degree, and is not prepared to do that. The Council cannot enter into a proper debate and argument on the merits of the matter. The Attorney-General should withdraw and apologise.

The Hon. C.J. SUMNER: I'm not going to. I am sorry, Mr President, I do not feel I can in the circumstances. I have asked you to check the *Hansard*, and I can only suggest that that be done, because I did not refer to him—

The PRESIDENT: I am not prepared to enter into any debate. In the spirit of how the Council is operated, I have asked you to withdraw and apologise. If you are not prepared to do that, I am afraid I must name you.

The Attorney-General is not prepared to withdraw. I name the Attorney-General. I have to report to the Council that I have named the Attorney-General, and I report his offence to the Council.

The Hon. C.J. Sumner: You haven't named me.

The PRESIDENT: I have named you.

The Hon. C.J. Sumner: When?

The PRESIDENT: Just a while ago. I said that I was forced to name the Attorney-General. I have named the Attorney-General and have to notify the Council and report his offence to the Council, which was that I had asked the Attorney-General to apologise and withdraw—

The Hon. C.J. Sumner: I'm sorry: I did not hear you name me.

The PRESIDENT: I named you: I named the Attorney-General.

The Hon. R.I. LUCAS: If the Attorney did not hear you, and he apologises and withdraws now—

The Hon. C.J. SUMNER: I withdraw and apologise but I do so under absolute protest, and I consider the behaviour—

The PRESIDENT: That is not good enough.

The Hon. C.J. SUMNER: I have withdrawn, and I do so under protest.

The PRESIDENT: That is it: leave it at that.

The Hon. C.J. SUMNER: I withdraw and apologise, but if this behaviour in this Chamber does not stop, I think it is about time that members took a stand on the disgraceful behaviour we have to put up with in this Parliament.

The PRESIDENT: Order! It will not stop if I concede to either Party. It has to stop by both Parties being a party to stopping it. I accept the Attorney's apology and withdrawal.

CONSUMER CREDIT

The Hon. K.T. GRIFFIN: I seek leave to make a brief explanation before asking the Minister of Consumer Affairs a question about uniform consumer credit legislation.

Leave granted.

The Hon. K.T. GRIFFIN: A report in Monday's *Australian Financial Review* said that the draft Credit Bill released by the Standing Committee of Consumer Affairs Ministers in September 1991 was to be scrapped after more than two years work at a cost of several million dollars. This followed the scrapping of an earlier 1989 draft Bill. The report indicated that the New South Wales Minister for Consumer Affairs and the Victorian Minister had taken the decision to scrap the latest draft and embark on drafting another by 1 April.

The 1991 draft had received almost universal condemnation as being misguided and out of touch with reality, reducing flexibility and choice for consumers and not addressing a number of important issues. That condemnation was probably not so strong as that directed towards the 1989 Bill. In addition, the criticism of the 1991 draft was made that the all important draft regulations had not yet been prepared and made available to interest groups to enable them to have a comprehensive view of the impact of the legislation, if passed.

The *Financial Review* report suggested that other States had not agreed to the new process but were expected to consider it after 1 April and that the Special Premiers' Conference in May would be considering a new draft. Part of the problem in the process, as I understand it, has been that the development of concepts and drafting was undertaken without those with day-to-day experience of the operations of the finance industry being part of any team. The report says that part of the agreement between New South Wales and Victoria is that financial institutions will have *carte blanche* to charge an annual or up-front fee for credit cards. My questions to the Minister are:

1. Does the Minister support the scrapping of the 1991 draft Credit Bill and the decision of the New South Wales and Victorian Ministers to start from scratch?

2. What are the policy objectives in relation to any new Bill?

3. What level of involvement will the finance industry have in drafting any new Bill?

4. What timetable is likely to be established for the drawing of a new Bill, public exposure and enactment?

5. Does the Minister agree that backers of credit cards should be able to charge annual or up-front fees?

The Hon. BARBARA WIESE: I cannot confirm the details that have appeared in the report in the *Financial Review* as to matters that have been discussed or may have been agreed between two Ministers who are members of the Standing Committee of Consumer Affairs Ministers. However, I am aware that discussions have been taking place between the New South Wales and the Victorian Ministers on the matter of the draft Credit Bill. A meeting was held last Friday at which the two Ministers were present, and I understand that at that meeting representatives of industry took part in the discussion as well. I am awaiting a report from the Ministers on any matters upon which they may have reached agreement and on any issues upon which they were unable to reach agreement. Once those matters have been reported to me and to other Ministers who take part in SCOCAM, decisions can be made as to whether or not SCOCAM should be reconvened in order to receive submissions from these two Ministers on matters that have formed the basis of discussion over a period of years and on which it has been very difficult to reach agreement.

I should point out that during this past five or six years or so, South Australia has been appointed as the drafting State for legislation on uniform credit laws. One of the reasons for this is that South Australia has tended to take what might be termed, within the context of this debate, a moderate view, that is, a view which is somewhere between the two extreme positions that have been taken over the years by New South Wales and Victoria. Members would be aware that recently the Minister for Consumer Affairs in Victoria changed, and I understand that the view that the new Minister takes on some of these matters is rather different from that of his predecessors. Therefore, I have welcomed the fact that the two Ministers from the largest States in Australia have been prepared to get together and talk about the terms of the Credit Bill.

However, as to whether South Australia and other States will agree with any matters upon which they have conferred and agreed, only time will tell. As for my own position on the matter and taking into account the final question asked by the honourable member, whether I would agree with the introduction of up-front fees on credit cards, I reserve my judgment on that and other matters until I have had an opportunity to examine the whole package. I say that because on the matter of fees on credit cards, one of the stumbling blocks that has always been present in the debate on this matter is that Consumer Affairs Ministers have indicated that, if there were to be any change on this question, it would be entertained only if it could be guaranteed by the financial institutions that there would be quite a considerable drop in interest rates. The financial institutions have never been able to indicate, first, that they were prepared to do that or, secondly, that there would be some mechanism for ensuring that interest rates would remain at a reasonable level.

So, whether there can be a shift on that policy or on other issues will depend very much on the matters that I have talked about and on whether or not a whole package can be put together which provides a reasonable balance between the interests of the financial institutions, that is, the industry on the one hand and consumers on the other. As I said, I am awaiting a report from Ministers. In fact I expect to receive information some time this afternoon. Once I have a clearer idea of what has been discussed, I will be happy to participate with my interstate colleagues in determining what further action should be taken.

ADELAIDE AIRPORT

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister of Tourism a question about the upgrading of Adelaide Airport.

Leave granted.

The Hon. DIANA LAIDLAW: Adelaide Airport did not rate a mention in the Prime Minister's statement last night, although approval was given for the construction of common user domestic terminals at Sydney and Melbourne airports; the completion date for Brisbane's new international terminal was brought forward by one year to 1995; and $27.5 million was found to upgrade regional and rural aerodrome infrastructure.

This snub to Adelaide Airport is a bitter blow—and I suspect the Minister would agree with this—for the tourism industry and for the establishment of Adelaide as a transport hub. I note that late last year the South Australian section of the Federal Airports Corporation released plans for a $150 million expansion to the Adelaide Airport and that Premier Bannon's submission to the Prime Minister last month outlined four priorities for the airport—a new four-gate international terminal; the modification of the existing international terminal as a common user terminal; a 500 metre extension of the main runway; and an expanded freight handling capability.

The Federal Airports Corporation Act provides for infrastructure to be developed in joint ventures with a State Government or private enterprise. I understand that the potential for a joint venture initiative to upgrade the airport with either the South Australian Government and/or private enterprise has been investigated by a working party comprising representatives of the South Australian Government and the Federal Airports Corporation in Adelaide, and that their report was due to be provided to the Government in February.

Recognising that tourism is a very competitive business and that it is earmarked by the Government as one of its five strategic areas for economic development, I ask the Minister:

1. What will be the impact on projections for visitor numbers and visitor nights in South Australia following the decision by the Prime Minister to pour money into improving airport facilities in the eastern States but to ignore the need to expand the Adelaide Airport as outlined in Premier Bannon's submission?

2. Has the Adelaide Airport Working Party yet reported on options for alternative means of funding upgraded facilities at Adelaide Airport?

3. Is the State Government interested in participating in a joint venture project to help fund the necessary upgrade of Adelaide Airport, or does she consider that the Prime Minister's references to accelerated depreciation provisions, and possibly even the easing of restrictions on foreign investment, may encourage the private sector to participate in a joint venture project?

The Hon. BARBARA WIESE: It is probably too soon to be jumping to conclusions about the impact of the Prime Minister's statement for the medium to long term in airport development in Australia. I certainly have not yet had access to detailed papers concerning forward plans by the Federal Government about airport development, other than references to the short-term plans for Brisbane and Melbourne airports. This is one matter that I intend to pursue quickly as a result of the statements that were made by the Prime Minister last night.

As I have indicated in this place before, the South Australian Government views the matter of the upgrading of the Adelaide Airport facilities as crucial to our future tourism development and to the future of other industry development in South Australia. The transport hub concept is one part of our concern. The honourable member is aware, I am sure, that the Government has an air access group that has been working diligently with people in industry as well as with the Federal Airports Corporation in producing future projections and plans for the Adelaide Airport, and these matters have been taken up with the Federal Airports Corporation and other appropriate Federal Government authorities on numerous occasions. We have not been satisfied so far with the amounts of money that have been allocated for work in the short term on the Adelaide Airport facilities, and we would like to see greater commitment given to upgrading those facilities.

As there is now a projection for new money to be devoted to these matters as a result of the Prime Minister's statement last night, we will be putting strongly the case that South Australia should be amongst the States that will benefit from that injection of funding.

In conclusion, the Prime Minister's statement is probably the most positive Federal Government statement that has ever come forth in support of the tourism industry, and I believe that the provisions for accelerated depreciation allowances, which will encourage development in the tourism industry as well as in some other sectors, are an extremely positive move from which I hope South Australia will be able to derive some benefit. In the long term the plans announced, which will free up airline investment and enable changes to occur with respect to ownership of Qantas and Australian Airlines with perhaps a merger of airlines in New Zealand over time, will have significant benefits for the development of Australia's tourism industry and hopefully will also mean that we will have not only very strong airlines in our part of the world but also airlines that will be sufficiently strong in their own right that it may lead to a reduction in the cost of air travel, and that can only be of benefit to the development of the Australian tourism industry.

In general terms, the Prime Minister's statement is an extremely positive one for Australian tourism. As to the details of the statement and how much South Australia can benefit from it is a matter that we will have to study further. I intend to take up those matters with great vigour with my counterparts nationally as soon as I am able. I also intend in the near future to have discussions with Qantas about its proposals for the future.

The Hon. DIANA LAIDLAW: By way of supplementary question, will the Minister bring back on the next day of sitting answers to my second and third questions which she did not seek to answer?

The Hon. Barbara Wiese: What were they?

The Hon. DIANA LAIDLAW: They are in *Hansard*. Would the Minister please bring back answers on the next sitting day?

The Hon. BARBARA WIESE: I cannot recall questions two and three, but if I am able to bring back answers to those questions I will do so. I was trying to indicate in my remarks to the honourable member that, until I have details of the Federal Government's plans concerning the statement, it is difficult to do so. I will look at *Hansard* and seek to bring back replies as soon as I can.

TELEVISING OF PARLIAMENT

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking you, Sir, a question about the televising of Parliament.

Leave granted.

The Hon. M.J. ELLIOTT: I have been meaning to ask this question for some time, but what we saw today spurred me into asking it now. Some 16 months ago when on a

parliamentary exchange visit to Canada, I had occasion to visit a number of provincial Parliaments as well as the national Parliament. I was interested to note that not only the national Parliament but also the provincial Parliaments are televised through a dedicated channel in Canada which allows all proceedings of Parliament to be available to the general public. When that channel is not being used for that purpose, it runs a series of programs explaining not the behaviour of members but the rules of Parliament, second readings and so on. It is very much an educative program.

There has been some debate amongst people with whom I have spoken about whether we should be looking at televising Parliament here in South Australia. A couple of reasons have been put forward, first, that in 1991 Australia lost over 1 000 journalists. In other words, most media organisations are running very close to the bone. As such the coverage generally in Parliament has declined, so the public is less aware of what is happening and certainly are not aware of reasons why some members behave in certain ways. It is also a question of the behaviour of members of Parliament. I was a teacher for nine years, and I never saw a class behave the way that this place behaves from time to time. I ask you three questions, Sir. Do you have a personal view on the value of televising State Parliament? Do you believe that it would improve information flow to the public? Do you think there is any chance that it will improve the behaviour of members of this Council?

The PRESIDENT: As to whether I have a personal view, I believe the cost factor would make it prohibitive. I cannot see a dedicated channel here or enough publicity for a dedicated channel when we are not sitting which, of course, is for half the year. My view is that I do not think it is feasible from a financial aspect. My view is that it would probably improve the behaviour of members. However, I do not know whether it would have a good information flow, as I do not believe enough people would look at it.

If there was any decision to do such a thing, it would be a decision of the Parliament as such and not be left to the Presiding Officers. It would involve the wish of the Parliament of which the Presiding Officers would take note. At present we have television coverage at any time we are sitting and for any stage of proceedings. As long as television crews comply with certain guidelines that have been laid down, there is nothing stopping television crews staying here all day, taking pictures of us and putting them to air. However, they only come in for a two or three minute news grab, and that is about the time span of the public's attention. With some of the debates and things that we do here, the public would be turned off in less than two minutes.

BETTER CITIES PROGRAM

The Hon. J.C. IRWIN: I seek leave to make an explanation before asking the Minister for Local Government Relations a question about the better cities program.

Leave granted.

The Hon. J.C. IRWIN: I have asked the Minister a number of questions about the better cities program which was first announced in the 1991 Federal budget and for which $816 million was to be allocated over five years to the States and Territories. In a reply to me on 13 November last year the Minister stated:

> A State level coordinating committee comprising representatives from all levels of Government has made recommendation to the Premier, Deputy Premier, Minister of Housing and Construction and the Minister for Environment and Planning on a number of exciting projects. An announcement on these projects will be made shortly.

As far as I am aware, no such announcement has yet been made. When I asked the Minister a further question last Thursday about South Australian participation in the better cities program, she said:

> I am well aware that numerous South Australian councils have put forward for consideration well thought out and detailed proposals.

On a per capita basis, South Australia could expect to receive about $80 million under this program and, according to the Minister's previous statement, there is a good deal of competition for this money in South Australia. However, it appears that many of these projects will now have to be taken off the list as a result of the announcement in last night's economic statement that the Commonwealth's contribution to the MFP program will come from the better cities program. The allocation of $40 million announced last night takes, in one stroke, at least half South Australia's likely share of this money. This decision suggests that the Commonwealth really does not regard the MFP as a national project because no new money is being provided: it is simply a reallocation of already budgeted better cities funding for one particular project. Last night's statement was the first time, as far as I am aware, that it had ever been suggested that the MFP would be funded from the better cities program. Certainly in all the Minister's previous statements this has never been mentioned. Therefore, I ask the Minister:

1. How many South Australian projects have been listed for consideration for funding under the better cities program?
2. What is the total estimated cost of these projects, and will the Minister release a list of them?
3. Did the South Australian Government ever contemplate, before the Prime Minister's economic statement, that funding for the MFP would come from the better cities program?
4. As a result of the Commonwealth's decision, how much better cities funding will remain available for projects in South Australia other than the MFP?

The Hon. ANNE LEVY: I think the questions asked by the honourable member cover a number of portfolios. Certainly the Minister for Environment and Planning has been involved in discussions and submissions relating to the better cities program, as have other Ministers such as the Minister of Housing and Construction and the Deputy Premier. I will refer the honourable member's questions to the several Ministers who have been involved in this matter and bring back replies as soon as possible.

SOUTH-EAST RAIL SERVICES

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister representing the Minister of Transport a question about South-East rail services.

Leave granted.

The Hon. T.G. ROBERTS: Today's *Advertiser* contains an article which states that Mount Gambier is to lose its rail service after a long fight, and that the rail passenger service has been closed. The welcome decision last night by the Prime Minister in the One National statement that money would be spent on transport corridors around Australia, including the Sturt Highway and the rail link between Melbourne and Adelaide, did not go into future rail services between Bordertown and Mount Gambier or the status of any upgrade, if any; nor did it mention anything about the Victorian end between Heywood and Snuggery, which is a well used line and one which, I understand, pays for itself.

Will the Minister in another place take up with the Federal Minister (Mr Bob Brown) the future role and status of rail services between Bordertown and Mount Gambier and Heywood and Snuggery?

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

SMALL BUSINESS

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

Leave granted.

The Hon. L.H. DAVIS: The Earthmoving Contractors Association of South Australia has over 200 members who play a vital role in the important building and construction industry. The association's year book provides information on the basic hourly cost of labour. The 1992 year book reveals that on-costs represent a staggering 93.7 per cent of the award rate. In other words, the award rate of $12.01 an hour for a 38 hour week represents a weekly wage of $456.40 and an annual wage of $23 823.04.

However, after taking into account annual leave loading, daily travel allowance, superannuation, redundancy provision, long service leave, workers compensation, workplace registration, payroll tax and the training levy, the hourly labour costs for production times balloons from $12.01 to $23.26, that is, a 93.7 per cent loading on the hourly award rate. A comparison with the figure in the 1990 year book shows a deteriorating trend, because in 1990 on-costs represented only 87.6 per cent of the hourly award rate.

The main culprit in this extraordinary cost burden for earthmovers is workers compensation, which has increased on average from $965 a year to nearly $2 200 a year because of the increase in the premium rate from 4.5 per cent to 7.5 per cent. Superannuation and the need to provide for redundancy are other items where there has been a sharp increase.

In other words, in John Bannon's South Australia, on-costs for a vital sector in the building industry represent nearly twice the average award rate, and the situation is deteriorating. The Earthmoving Contractors Association is understandably disturbed at this trend, particularly at a time when their members have been forced to shed labour as they try to ride out the worst economic recession in 60 years. My two questions are important. Does the Minister understand that the Bannon Government is wringing the last drop of financial blood from small businesses in South Australia and that they cannot take it any more?

The Hon. Anne Levy interjecting:

The Hon. L.H. DAVIS: Mr President, Government members simply do not understand what is happening out there. The levity on the other side sickens me.

Members interjecting:

The Hon. L.H. DAVIS: Not one of you has ever been in a small business. You just would not know. You wouldn't understand.

Members interjecting:

The PRESIDENT: Order! The honourable Mr Davis.

The Hon. T.G. Roberts: What happened to the kite factory?

The Hon. L.H. DAVIS: I don't know what happened to the kite factory. I never owned it. I had a kite shop; there were no strings attached! My second questions is: will the Minister of Small Business explain what strategies she has in train to reverse this appalling trend?

The Hon. BARBARA WIESE: The earth moves for the honourable member about once a year, it seems, because about once a year he asks a question based on information that he gleans from the Earthmoving Contractors Association. The information that is contained in the honourable member's explanation relating to the Earthmoving Contractors Association membership is similar to that which he has provided on numerous other occasions concerning other sectors of the industry, and his questions relating to the Government's programs for assisting people in business have been asked on many occasions. I have responded to those questions outlining measures that have been taken over the years with respect to taxation, deregulation, WorkCover changes and numerous other matters, and I have also outlined our intentions for the future. To save the time of the Council, I refer the honourable member to my previous replies to these matters.

RAIL SERVICES

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Minister representing the Minister of Transport a question about rail services and the proposed standardisation of the Adelaide to Melbourne rail line.

Leave granted.

The Hon. I. GILFILLAN: Last night's announcement by Prime Minister Keating of a $115 million standardisation of the Adelaide to Melbourne rail line has raised concerns among a number of commuters using the STA rail service from Belair to Adelaide. Because the Belair service runs on broad gauge some commuters believe and are concerned that the STA will use the standardisation project to withdraw the Hills service, forcing many thousands of extra commuters onto already congested roads.

We have already seen the STA cut the rail service to Bridgewater, against the wishes of commuters in that area, and Belair patrons could soon be faced with the same prospect. So far, there has been no indication from the Transport Minister as to the effect the standardisation project will have on local passenger services, but there is no doubt that at the very least there will be a withdrawal of services for some time while reconstruction takes place along that section of line.

Commuters are concerned that adequate alternatives have not been put in place and, despite the obvious environmental benefits to be gained from promoting rail as a transport option, the STA will simply use the project as an excuse to continue its policy of slashing passenger rail services.

It is very appropriate that earlier my colleague the Hon. Terry Roberts raised the issue of the rail service generally to Mount Gambier. It is fair to comment on what could be described as the treachery by the two transport Ministers to rail commuters to Mount Gambier. This is a good reason for people at Belair and others in the Adelaide Hills to be concerned about what may happen to them, virtually unannounced, with the risk of the disappearance of their rail service. Commuters who use the service between Belair, Goodwood, Keswick and Adelaide Central want reassurance they will not be the next victims of transport treachery, abandoned like the people of Mount Gambier by both State and Federal Ministers. My questions to the Minister are:

1. Can the Minister guarantee that current STA passenger services between Belair and Adelaide will be maintained during and after the standardisation project?

2. If not, what alternative public transport services will people living in the Adelaide Hills area have to replace train services?

3. If passenger rail services are to be maintained what will be the period of disruption to those services during line reconstruction and what alternative transport options will the STA put in place during that period?

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

HIV/AIDS

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Health, a question on the subject of HIV/AIDS.

Leave granted.

The Hon. BERNICE PFITZNER: Following the case of an infected dentist causing significant public alarm, it was revealed that the SA Health Commission had no policy on how to deal with HIV infected health workers in private and in public practice. It was revealed that the commission had been unable to formulate any policy on HIV infection and health care workers in terms of the public health impact. Further, the commission has no policy for dealing with its own staff who may become infected with HIV through work and related injury obtained whilst treating an HIV positive patient.

The South Australian Salaried Medical Officers Association (SASMOA) has been extremely concerned about these issues, in particular, the management and care of HIV positive medical staff in respect of continuing employment, and issues relating to workcover benefits. SASMOA has approached the Health Commission in September 1989, February 1990 and October 1991 concerning income protection; in October 1990 concerning management of blood borne infection; and in December 1991 concerning a claim for special provisions for medical staff with infectious disease. None of these issues has been formally addressed by the Health Commission and they remain unresolved. My questions to the Minister are:

1. Will the Minister raise these issues with the Health Commission so that they can be formally addressed and resolved?

2. Will the Minister encourage or even direct the commission to produce a draft policy on the concerns mentioned?

3. When can the public expect policies to be formulated on such an important and potentially lethal disease?

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

SECURITIES DEALERS

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Attorney-General a question about dealers in securities.

Leave granted.

The Hon. J.C. BURDETT: I have been contacted by a constituent who was induced to place $76 000 in the hands of an investment adviser who held a dealer's licence under the Securities Industries (South Australia) Code. The money was to be placed for investment in specific securities agreed to by the constituent and the adviser. The investments were never made and the constituent attempted to recover her money, but to no avail. She has lost her $76 000 without any hope of recovery. She had recently been widowed and the $76 000 comprised a substantial part of her late husband's estate. I will not go into the details of the case, but I have a copy of the statement of witness that the constituent made to the police.

A number of other persons are in a similar position to my constituent and two have written to me supporting her and referring to their own cases. A member of the fraud task force also accompanied my constituent when she came to see me. The Securities Industries (South Australia) Code provides for a person carrying on a business dealing in securities to be licensed, but there are no stringent provisions about licensing, and the powers of the commission are rarely exercised. There is no requirement for an audited trust account, and this is vital in this area.

The officer of the fraud task force who saw me stated that he had been involved in some of the fairly recent cases in regard to land brokers. He said that, although enforcement of these provisions had been lax, it was the requirement of an audited trust account report that had eventually brought some of the offenders to account. I appreciate that the Securities Industries Code was the subject of a State-Commonwealth agreement and cannot be resolved by South Australia unilaterally.

My questions are: will the Attorney *(a)* examine the question of improving the surveillance of the present Act and *(b)* use his influence to provide for a requirement of audited trust accounts for investment advisers in their capacity as dealers in securities?

The Hon. C.J. SUMNER: I will take up that matter with the Australian Securities Commission and, if necessary, through the ministerial council. It is not something over which I have any jurisdiction in this State, except as a member of the ministerial council. I will have the matter examined and see whether anything can be done.

LOCAL GOVERNMENT

The Hon. J.C. IRWIN: Has the Minister for Local Government Relations an answer to a question I asked on 13 February concerning local government?

The Hon. ANNE LEVY: Yes, and I seek leave to have it inserted in *Hansard* without my reading it.

Leave granted.

Evidence sought or obtained to verify the authorisation of a council to borrow, whether it be for a long term loan facility or a short term overdraft type facility, is generally left to the requirements of the individual financier, in order that any necessary lending policy conditions they may have are satisfied. Such policy requirements could include statutory declarations as to compliance with the Local Government Act.

For long term borrownings, the Local Government Finance Authority of South Australia normally seeks a Statutory Declaration from the Chief Executive Officer declaring that the Council 'resolved an order to borrow' the sum of money sought together with the date of the meeting at which such resolution was duly passed. Where long term borrowings are involved, the Council will normally also issue a debenture to the Finance Authority.

Debentures issued by councils for loans are executed under seal. Section 37 of the Local Government Act requires that the common seal of the council can only be affixed to a document to give effect to a resolution of the council and the sealing must be attested by the Mayor or Chair of the Council and the Chief Executive Officer. This provision of the Act is seen to provide a reasonable measure of protection for lenders.

In respet of short term loan facilities, it is the practice of the Local Government Finance Authority of South Australia to obtain a copy of the relevant council resolution attested to by the Mayor or Chair and the Chief Executive Officer. The documentation for this shorter term loan facility has generally not been required to be executed under Seal of the Council.

It is possible that banks may have different requirements relating to the decumentation a council must provide when negotiating a loan. Some banks require an extract from the minutes of the council meeting at which the resolution to borrow was passed.

Councils normally seek the establishment of new short term loan facilities with the Local Government Finance Authority of South Australia each year mainly to cater for cash flow requirements pending receipt of rate revenue. Those councils dealing with banks will also normally update their authority in respect of overdraft facilities each year. However, there is no statutory provision within the Local Government Act requiring councils to update such authorities on an annual basis.

SUMMARY OFFENCES (CHILD PORNOGRAPHY) AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Summary Offences Act 1953. Read a first time.

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

That this Bill be now read a second time.

This Bill amends section 33 of the Summary Offences Act 1953 ('the Act') to prohibit the possession of child pornography. The Bill makes the possession of child pornography an offence punishable by imprisonment for a year or a $4 000 fine. Further, the Bill provides that a person who produces, sells or exhibits child pornography may be imprisoned for two years for a first offence and four years for a second or subsequent offence. The latter offence attracts a high penalty because it is the first link in the chain of sexual exploitation of children and is often done for commercial gain. These amendments are based on recommendations of the Australian Law Reform Commission (ALRC) in its report No. 55 entitled 'Censorship procedure' which, among other things, recommends the adoption of a national legislative scheme in the censorship area.

In examining the reference from the Federal Attorney-General, the ALRC considered the issue of child pornography. The ALRC considered Australia's obligations as a result of ratification of the United Nations convention on the rights of the child, particularly article 34, which undertakes to protect all children from all forms of sexual exploitation and sexual abuse. The production of child pornography is likely to involve child sex abuse and is often associated with child sex offenders. As a result of extensive consultation, the ALRC has recommended that the possession and production of child pornography, regardless of its intended use, be made an offence. Currently, child pornography has been deemed unsuitable for commercial distribution and is classified 'refused classification' by the Chief Censor. Under the Criminal Law Consolidation Act 1935 there are various provisions which make it an offence to have sexual intercourse with persons below a certain age. Section 58a of the Criminal Law Consolidation Act makes it an offence if a person for prurient purposes incites or procures the commission by a child of an indecent act. However, as the law stands at present, before this amendment, the mere possession of child pornography is not an offence.

The Government believes that children, who are amongst the most vulnerable in our society, must be protected from adults who seek to abuse and exploit them. This amendment will work to eliminate the sexual exploitation of children in our society. The Bureau of Criminal Intelligence, which investigates the problem of child pornography, fully supports the amendment. I seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 amends section 33 of the Act to create an offence of possession of child pornography.

Paragraph *(a)* inserts a definition of child pornography. The definition covers indecent and offensive material in which a child is depicted or described in a way that is likely to cause offence to reasonable adult members of the community.

'Indecent', 'offensive' and 'material' are already defined terms.

The definition covers indecent or offensive material which depicting a 'whether or not the child is engaged in sexual activity'. These words are included, in keeping with the ALRC report, to deal with indecent material where the child is not represented as actually involved in indecent activities but is rather the witness of indecent activity.

The currently vague concept of indecency is supplemented by the test, recommended by the ALRC, that the material must be reasonably likely to cause offence to reasonable adult members of the community. All offensive material comes within this test by definition.

Paragraph *(b)* transfers the penalties currently found in subsection (3) to the end of subsection (2) and applies increased penalties (two years imprisonment for a first offence and four years for a second or subsequent offence) in relation to production, sale or exhibition of all child pornography rather than only in relation to pornography the production of which physically involved a child.

Paragraph *(c)* repeals the old subsection (3) and inserts a new offence of possession of child pornography punishable by a penalty of one year imprisonment or a $4 000 fine.

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

SUBORDINATE LEGISLATION (EXPIRY) AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Subordinate Legislation Act 1978. Read a first time.

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

That this Bill be now read a second time.

This Bill proposes changes to the automatic expiry provisions of the Subordinate Legislation Act. In 1987 this Parliament passed legislation that provided for the sunsetting of regulations after seven years. The legislation was introduced primarily to allow for the consolidation, rationalisation and simplification of regulations which have become outdated and was part of a package of deregulation initiatives introduced by the Government at the time. Under the package the development of new or amended legislation must undergo a stringent prior assessment process to ensure that the benefits of regulation clearly outweigh the costs.

The mechanism to continually review laws which govern activities and behaviour is appropriate given the dynamic regulatory environment in contemporary society. However, one of the major problems with the expiry program to date has been the delays in completing reviews. These delays have, in most cases, been caused because the review of regulations under an Act has prompted, quite naturally, a wider review encompassing the Act itself. It is quite proper for Acts to be reviewed, but this is a much more comprehensive task and contributes significantly to finalising the review of regulations.

Regulations made after 1 January 1986 have a seven year life. Between 20 and 60 new sets of regulations have been made each year since that date. If no adjustment is made to the expiry timetable currently set by the Act, many exemptions will have to be granted over the next two years. The Joint Committee on Subordinate Legislation has also raised concern over this aspect of the program. Exemption from expiry is achieved by prescribing in regulation those regulations to which the expiry provisions do not apply. As there are no provisions to the contrary, all exemptions from expiry have to date been granted for no specific period.

This Bill proposes that rather than the term 'exemption', which conveys the impression that the regulation is in some

way outside the provisions of the Act, the process should be referred to as a 'postponement' of expiry. In addition, to ensure that the deregulation processes are sufficient and effective, the Bill provides that postponement be for a period of up to two years with provision for further such postponements. The effect of disallowance of a regulation under the Subordinate Legislation Act exempting a regulation from expiry (or postponing a regulation) is also not clear. The Bill proposes that disallowance of a regulation granting postponement has the effect of revoking the regulations as from the date of the resolution of disallowance.

Finally, the Bill provides for a new expiry timetable to be set to provide that regulations falling within the ongoing review program expire on 1 September in the year following the year in which they have their tenth anniversary. It is estimated that over 250 sets of regulations will have to be reviewed and either have to be redrafted or let lapse before the first stage of the automatic revocation program is completed (that is, the complete review of all regulations made prior to 1 January 1986). This includes the regulations that have to date been exempted from the program.

The Subordinate Legislation Act currently provides that this is to be achieved by 1 January 1993. The 'rolling' expiries [that is those Regulations made after 1 January 1986] are scheduled to commence on 1 January 1993. Under the current program reviews of the 1986 regulations are due to be completed in 1992. The Bill provides that the program be extended to enable the backlog of regulations to be dealt with before starting out on the "rolling" expiries.

To achieve this, regulations falling within the ongoing review program are to be given a longer life. Such an extension would not detract from the value of the expiry program. Regulations made after 1986 have been drafted by Parliamentary Counsel cognisant of one of the main aims of the expiry program that is to simplify, consolidate and rationalise all subordinate legislation. Once regulations have been subjected to this kind of review a first time, the second, third and so on reviews are not of the same value. The Bill therefore also provides that the catchup program be extended so that all regulations made before 1987 be dealt with by 1 September 1996. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal.

Clause 2 amends section 16a which sets out the regulations to which part IIIA (the expiry program) applies. It removes paragraph *(f)* which provides that the regulations may exempt regulations or a class of regulations from the program. The Bill provides instead for the expiry of regulations to be postponed: see clause 4. Paragraph *(f)* is replaced with one that provides that regulations made by a person, body or authority other than the Governor are excluded from the expiry program. Paragraphs *(b)* and *(e)* are deleted since the work of these paragraphs is taken over by that of the new paragraph *(f)*.

Clause 3 substitutes subsection (1) of section 16b which sets out the expiry program. The program is amended so that regulations expire on 1 September following the 10th anniversary of their publication in the *Gazette*. The catchup program is consequently extended as follows:

(a) a regulation made before 1 January 1976, and all subsequent regulations amending that regulation, will expire on 1 September 1992;

(b) a regulation made on or after 1 January 1976 but before 1 January 1980, and all subsequent regulations amending that regulation, will expire on 1 September 1993;

(c) a regulation made on or after 1 January 1980 but before 1 June 1982, and all subsequent regulations amending that regulation, will expire on 1 September 1994;

(d) a regulation made on or after 1 June 1982 but before 1 April 1984, and all subsequent regulations amending that regulation, will expire on 1 September 1995;

(e) a regulation made on or after 1 April 1984 but before 1 June 1985, and all subsequent regulations amending that regulation, will expire on 1 September 1996;

(f) a regulation made on or after 1 June 1985 but before 1 January 1987, and all subsequent regulations amending that regulation, will expire on 1 September 1997.

The regulations referred to in paragraphs *(a)* and *(b)* have previously been exempted from expiry.

Clause 4 inserts a new section 16c which allows for the postponement of expiry of any regulation for periods not exceeding 2 years at a time. It also provides that disallowance of a regulation postponing the expiry of another regulation means that the other regulation ceases to have effect from the date on which the notice of disallowance is published in the *Gazette* (if this is before the date of expiry as set out in section 16b, the regulations will continue to have effect until the date of expiry).

The Hon. J.C BURDETT secured the adjournment of the debate.

ASSOCIATIONS INCORPORATION (MISCELLANEOUS) AMENDMENT BILL

In Committee.

(Continued from 26 February. Page 3048.)

Clause 16—'Alteration of rules.'

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

Page 7, line 23—strike out 'only'.

Clause 16 deals with alterations to the rules of an association and specifically amends section 24 of the principal Act. The Bill seeks to provide that an alteration to a rule of an incorporated association may be made only by a special resolution of the association. I indicated during my second reading contribution that I was concerned that this should provide only for a special resolution as the procedure by which an amendment was made to the rules of an incorporated association. I acknowledge that the principal Act does provide that, if some other body's approval is required before an alteration to a rule can be effective, that will be maintained.

However, there are a number of organisations which do have different forms of procedure for amending rules. I do not believe that with some 12 600 associations we ought to be saying that all of them must alter their rules only by a special resolution. I propose that the word 'only' be deleted and to provide that an alteration to a rule may be made by a special resolution unless other provision is made in the rules of the association. That accommodates the situation where if there is no provision in the rules, a special resolution can achieve the objective of amendment and, if some other procedure is provided in the rules, that takes precedence.

Some associations do not require a special resolution. In their rules, they are comfortable with an ordinary resolution. I have looked at a few associations' rules where this is the position, and I have raised the question, 'Don't you want a special resolution to amend rules?' They have said, 'No, we are quite happy with ordinary resolutions.' If an organisation is comfortable with its procedure for amendment, why should the law impose this obligation upon them? One can understand it where there is a commercial entity such as a company where one may want to prescribe some uniformity, but because the whole concept of association incorporation is designed to accommodate a variety of small bodies, as well as large, it seems to me inappropriate to make it mandatory that there has to be a special resolution before the rules can be amended. I thus move my first

amendment to strike out the word 'only' and indicate that a subsequent amendment will be moved.

The Hon. I. GILFILLAN: I strongly support the proposition. As well as the argument that the Hon. Trevor Griffin has put for justifying it, there are other circumstances involved. I indicated in my second reading contribution—and the Attorney indicated his response to that—that, in the case of postal ballot decision making, that occurred very rarely. It does so happen in the association to which I belong, which is the Australian Democrats and, without arguing the pros and cons of it, it does allow a much wider membership participation. We would be unable to exercise that method of decision making under this legislation, unless it were amended. So, I indicate our support for the amendment.

The Hon. C.J. SUMNER: The Government opposes this amendment. The Bill provides that the rules of associations can be altered only by special resolution. This makes for uniformity with other body corporate legislation; more importantly, it is the response to a dilemma of associations whose rules are difficult to alter because of antiquated provisions. In the exceptional case, the Corporate Affairs Commission has an absolving power under the Bill.

Amendment carried.

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

Page 7, line 24—after 'association' insert 'unless other provision is made in the rules of the association.'

Amendment carried; clause as amended passed.

Clause 17—'Management of incorporated association.'

The Hon. K.T. GRIFFIN: I indicate my opposition to this clause. It seeks to provide that a person is not eligible to be appointed or to act as a member of the committee of an incorporated association unless they are 18 years of age or above. I must say that I am not sure why that is included in the Bill, because many associations have persons younger than 18 years of age on committees of management, whether it be the local scout or guide association, the local yacht club or other sporting group. I know of a number of organisations which have provision for persons younger than 18 years of age to be on the committee of management. If one takes a sporting association, for example, a yacht club, one sees that they do have provision for 15, 16 or 17-year-olds on occasion to be part of the committee of management.

I just cannot see why we need to be so restrictive in relation to the membership of the management committee, because it will mean that many of the organisations which are incorporated will have to rule out the membership of those under 18 years of age. That is the reason for indicating opposition to this clause. I suppose one could make an aside and say, 'Well, why discriminate on the basis of age?', but that is somewhat facetious because 18 years is the age of majority. Apart from that, I think it is unduly restrictive, and I do not know what evil or ill is designed to be corrected by this proposition.

The Hon. I. GILFILLAN: There may be some justification for it on the basis of ability to take legal responsibility. I am assuming that, through the process of this legislation, committee members will have more legal responsibility and answerability and it may be justified on the basis that at the age of 18 years they are then able to carry the burden. As far as contributing to the committee is concerned, I would think that 16 or 17-year-olds may well be appropriate as committee members in certain associations.

The Hon. K.T. GRIFFIN: Of course, the age of criminal responsibility is 10 years. It is correct that more obligations are placed on members of committees of management under this Bill, but I do not think that that should be used as an argument for saying that you can no longer have on your committee of management a person who is less than 18 years of age, because they might become liable. I would have thought that, if the argument were to apply, the courts would certainly take into consideration the fact that a 16-year-old involved with a committee of management with a group of adults is less likely to attract criminal liability than someone who is an adult and been around in the world.

The only other point I make to the Hon. Mr Gilfillan is this: we have had the Associations Incorporation Act 1985 operating for six years. I know of no problems with minors being members of committees. We have the 1956 Associations Incorporation Act and I do not think that there are any problems with that. We had the 1886 Associations Incorporation Act again providing for incorporation and, again, there was no problem. Why not maintain the *status quo*, recognising that if this is passed it will disenfranchise a great many young people from participating as full members of a committee of an incorporated association, whether it be a yacht club, cricket or football club or any other sporting or community organisation. Scout groups or guide groups may be incorporated separately for the purpose of holding their property and have young people on the committee of management. It is a valuable experience for them and this will preclude them from being part of that committee of management, and for what reason I do not know.

The Hon. C.J. SUMNER: The problems that arise in this area (and maybe they are not overwhelming) are that, with children on the committee, there would be some restriction on whether they could be sued civilly because they are under the age of majority. If they were prosecuted for any offences under the Act, they presumably would have to be prosecuted in the Children's Court, but again that is not an insuperable obstacle. The corporations law provides for people over the age of 18 years to be on boards. There is, of course, no prohibition on minors being members of an association. The only real problem I think is the incapacity of people to sue the minors who are members of a committee of the incorporated association. They could still be prosecuted for offences and presumably people could still sue the incorporated association itself.

I am not unsympathetic to issues raised by the honourable member. It may be desirable in some circumstances for younger people, people under the age of 18 years, to participate on committees, although I am advised of allegations that a young group had completely stacked a committee of one association. Whether or not that creates problems, I do not know. Uniformity and difficulties in suing seem to be the reasons and, if honourable members can be convinced, they will support me and, if not, they will not.

The Hon. K.T. GRIFFIN: I am not persuaded by the argument for uniformity, because the whole concept of associations incorporation legislation is to give some flexibility to a fairly easy and cheap method of incorporation where you have not got the same objectives of company law. I do not think it matters if there is a difficulty about suing the members of a committee civilly—that will not happen very often anyway and, in terms of prosecution, as the Attorney-General says, that will be undertaken in the Children's Court.

I reiterate my concern that, if this clause passes, it will disenfranchise present young members of committees of management of associations and I know that without a doubt there are organisations where young people under the age of 18 years are members of the committee of management. It would be unfortunate if that disenfranchising occurred. On the point about the allegation of young people stacking a committee, I can only say that it can happen just as much with adults as it can with young people. With

respect, I do not think that that assists the argument either for or against.

The Hon. I. GILFILLAN: I do not support the clause.

Clause negatived.

Clauses 18 to 21 passed.

Clause 22—'Application of this Division.'

The Hon. K.T. GRIFFIN: We oppose the clause. This is consequential on the earlier amendment to insert a definition of 'prescribed association'.

The Hon. C.J. SUMNER: Agreed.

Clause negatived.

Clause 23—'Accounts to be kept.'

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

Page 10, lines 2 to 10—Strike out lines 2 to 10 and substitute the following:

23. Section 35 of the principal Act is repealed and the following section is substituted:

Accounts to be kept

35. (1) A prescribed association must keep its accounting records in such a manner as will enable—

(a) the preparation from time to time of accounts that present fairly the results of the operations of the association;

and

(b) the accounts of the association to be conveniently and properly audited in accordance with this Division.

Penalty: Division 6 fine.

This amendment is largely to accommodate the earlier insertion of the definition of 'prescribed association'. That is the main object.

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

Amendment carried.

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

Page 10, line 11—Strike out 'An incorporated association to which this Division applies' and substitute 'A prescribed association'.

This amendment is consequential.

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

Amendment carried.

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

Page 11—

Line 4—Strike out 'an association to which this Division applies' and substitute 'a prescribed association'.

Lines 6 and 7—Strike out 'an incorporated association to which this Division applies' and substitute 'a prescribed association'.

Lines 23 and 24—Strike out 'an incorporated association to which this Division applies' and substitute 'a prescribed association that has members'.

Amendments carried.

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

Page 11, lines 32 and 33—Strike out 'required to be held under the rules of the association' and substitute 'to be held'.

When I looked at the words in lines 31 to 34 on page 11 of the Bill, it seemed to me that something was missing. I think that my proposed redrafting makes it clearer. Under this, the committee must cause audited accounts, auditors' reports and the report of the committee to be laid before the members of the association at the annual general meeting of the association or, if an annual general meeting is not to be held, within five months of the end of the financial year to which the accounts relate.

Amendment carried; clause as amended passed.

Clause 24—'Lodgment of periodic returns.'

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

Page 12, line 2—After 'amended' insert the following:

(a) by striking out from subsection (1) 'An incorporated association to which his Division applies shall' and substituting 'A prescribed association must';

and

(b).

This amendment is consequential on the insertion of the definition of 'prescribed association'.

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

Amendment carried; clause as amended passed.

Clause 25—'Substitution of section 37.'

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

Page 12—

Line 10—Strike out 'an incorporated association to which this Division applies' and substitute 'a prescribed association'.

Line 14—Strike out 'an incorporated association to which this Division applies' and substitute 'a prescribed association'.

These amendments are consequential on the insertion of the definition of 'prescribed association'.

Amendments carried.

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

Page 13, line 1—Strike out 'have not' and substitute 'may not have'.

This matter was drawn to my attention by one of the accounting bodies. It acknowledges that accounts may not have been prepared on the accrual method of accounting to provide for the alternatives that are allowed for in the Act. I do not think it makes any great difference whether it is 'have not' or 'may not have been', although 'may not' is probably preferable grammatically.

The Hon. C.J. SUMNER: No objection.

Amendment carried.

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

Page 13—

After line 11—Insert 'and' between paragraphs *(d)* and *(e)*.

Line 26—Strike out 'an incorporated association to which this Division applies' and substitute 'a prescribed association'.

The first amendment is a drafting amendment, and the second is consequential.

Amendments carried; clause as amended passed.

Clause 26—'Annual general meeting.'

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

Page 13, line 39—Strike out this line and substitute the following:

26. Section 39 of the principal Act is amended—

(a) by striking out from subsection (1) 'an incorporated association to which Division II applies shall' and substituting 'a prescribed association must';

(b) by striking out from subsection (2) 'An incorporated association to which Division II applies' and substituting 'A prescribed association';

(c) by striking out subsection (3);

and

(d) by striking out from subsection (4) 'an incorporated association to which Division II applies' and substituting 'a prescribed association'.

The Bill deletes subsection (3), which is no longer necessary and was a transitional provision inserted in 1985. My amendment is consequential upon the inclusion of a definition of 'prescribed association'.

The Hon. C.J. SUMNER: We have no problem with it.

Existing clause struck out; new clause inserted.

Clause 27—'Insertion of new divisions.'

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

Page 14, lines 3 to 12—Strike out subclause (1) and substitute the following subclause:

(1) An officer of an incorporated association must not, in the exercise of his or her powers or the discharge of the duties of his or her office, commit an act with intent to deceive or defraud the association, members or creditors of the association or creditors of any other person or for any fraudulent purpose.
Penalty: Division 4 fine or division 4 imprisonment.

This amendment concerns the duties of officers. The Bill inserts a new section 39a, subsection (1) of which provides:

An officer of an incorporated association must at all times act honestly and with reasonable care and diligence in the exercise of his or her powers and the discharge of the duties of his or her office.
Penalty:

(a) if the offence is committed with intent to deceive or defraud the association, members or creditors of the association or creditors . . . or for any fraudulent purpose—division 4 fine or division 4 imprisonment;

or

(b) in any other case—division 6 fine.

Although I supported the penalty in relation to deceiving or defrauding, I was concerned that there was a heavy division 6 fine, which is $4 000, where someone has not exercised reasonable care and diligence. Whilst one might be able to expect that of the large organisations which have competent and professional staff working for them, it would not necessarily be appropriate for the smaller organisations which are entirely voluntary. Therefore, I am seeking to address the issue with the insertion of new subclause (1). That will be across the board. Later, I will deal with the question of reasonable care and diligence and apply that standard to an officer of a prescribed association where, of course, there are audit requirements and obligations likely to a much wider range of people than to a smaller organisation.

The Hon. I. Gilfillan interjecting:

The Hon. K.T. GRIFFIN: The Hon. Mr Gilfillan interjects and says there is the obligation to act honestly. I would suggest that that is covered by my amendment: that you must not commit an act with intent to deceive, which is really acting dishonestly. I have covered that, and it is covered in the penalty. In relation to any incorporated association, if an officer does not act honestly but acts with intent to deceive or defraud, there is a heavy penalty, and I suggest that acting honestly is covered by my amendment. Later we will deal with the issue of reasonable care and diligence in a subsequent amendment. I have other amendments which deal with the issue of an advantage, because I do not think the Bill is specific enough. I will address that when we get to it.

The Hon. I. GILFILLAN: I would like to ask the Hon. Trevor Griffin whether he has interpreted section 39a (1) as I have, that is, that an officer of an incorporated association must at all times act honestly and with reasonable care and diligence. To incur that penalty does not just involve a default on reasonable care and diligence. It also implies that the action has been dishonest. So, if that is the case and my interpretation is correct, it needs a penalty of some substance. It is not just the default of reasonable care and diligence: it is also dishonest.

The Hon. K.T. GRIFFIN: I do not accept that because this provision is taken from the old companies law, where a director had to act honestly and with reasonable care and diligence. It was always interpreted as being two areas of behaviour. In one category, you had to act honestly; in another, you had to act with reasonable care and diligence. They were not to be interpreted as acting honestly with reasonable care and diligence. Two separate standards were imposed.

The Hon. I. Gilfillan interjecting:

The Hon. K.T. GRIFFIN: Yes, reasonable care and diligence. Even if it were honest, if you were not acting with reasonable care and diligence, the division 6 fine would apply. But, the penalty under paragraph *(a)* would cover the situation where someone was not acting honestly. Two separate standards were imposed. That is my recollection of the interpretation of the provisions under the original companies law, where subsequently they were divided into two different offences. You must act honestly (that is one subsection), and you must act with reasonable care and diligence (that is another), and that is a lower and different duty from being required to act honestly. They are two separate issues. I suggest that I have covered the question of honesty in the penalty provision which I am seeking to include by way of amendment.

The Hon. C.J. SUMNER: I agree with the honourable member's interpretation of the clause, namely, that if someone acts honestly but without reasonable care and diligence, they could be the subject of prosecution under the Bill as introduced. I guess it is purely a policy issue. In this area, the Bill picks up the corporations law where there is an offence of failing to act with due care and diligence.

Apparently the history of the provisions in this Act and the corporations law is that no officer has ever been prosecuted for a lack of care and diligence. So, despite its existence in the law, as far as we can ascertain, there have been no prosecutions for a lack of care and diligence. For that reason, we were a bit indifferent, but it is a matter for the Hon. Mr Gilfillan to decide what he thinks is the overwhelming policy issue.

The Hon. I. Gilfillan: Does it exist in the current Act?

The Hon. C.J. SUMNER: No; it exists in the corporations law.

The Hon. K.T. GRIFFIN: What the Attorney-General has indicated is my recollection. He has all the records; I do not. It is not in the existing Associations Incorporation Act. It is in the corporations law but, if there have been no prosecutions, one has to ask whether we need it anyway and, if we leave it out, will any harm be done? My only concern in relation to smaller bodies corporate is that, if you create an offence of not acting with reasonable care and diligence, it tends to leave open a much wider range of neglect that can be actionable than might in my view be reasonable, considering the range of associations and people involved in these sorts of smaller bodies. We are talking only about those bodies which are not prescribed associations; my later amendment picks up prescribed associations.

The Hon. I. Gilfillan interjecting:

The Hon. K.T. GRIFFIN: The honourable member says that, if it applied to prescribed associations, he would not be so fussed about it. I draw his attention to my later amendment which inserts subsection (3a). I have tried to catch the associations that might have many transactions and dealings with the public, where you would expect a higher standard of care by members of a committee of management because generally they have expert staff and advice, and more proficient people on their committees.

The Hon. I. GILFILLAN: I reserve my final position until I hear from the learned Attorney on the matter. Looking intently at the amendment and its subsequent effects, it would be attractive to me because the Bill appears to expose people working on behalf of smaller associations to an unfair penalty level in a way that may be rather frightening. I am not reassured by the fact that there has been no action, because the corporations legislation deals with much more substantial entities than we will deal with in associations. I pause to hear what the Attorney-General has to say on the matter. I indicate that I find useful the Hon. Trevor Griffin's amendments as they have been explained.

The Hon. C.J. SUMNER: The reason for saying that, in the history of this provision there have been no prosecutions, is that it exists not only in the corporations law but also in the present Act. That is contrary to the information just given by the Hon. Mr Griffin. Section 33 of the current Act provides:

A member of the committee shall at all times act honestly and with reasonable diligence.

A penalty is attached to it. It is not in exactly the same wording, but the Bill deletes section 33 and replaces it with new section 39a, which picks up the wording in the corporations law. This Act has contained a provision relating to

reasonable diligence, which could have been the subject of prosecution, but there have been no prosecutions under this provision as far as the diligence issue is concerned nor any prosecution under corporations law on that point. If we approve the Hon. Mr Griffin's amendment we are retreating to some extent from the existing law.

The Hon. K.T. GRIFFIN: I apologise for having interjected and therefore misled the Committee and, obviously, the Attorney-General in relation to what is section 33 but, overall, if one looks at the sorts of penalties being imposed by the Bill, and particularly at the greater emphasis upon an officer acting honestly, acting so as not to deceive or to defraud, it seems to me that we are placing a much greater focus on the behaviour of members of committees of management.

In relation to small associations, removing the obligation to act with reasonable care and diligence is minor compared with the strengthening of the provisions that relate to acting honestly. I adhere to my amendment, which places the emphases where they should be and recognises that, with small associations, there are other areas for prosecution if someone acts contrary to the interests of the association.

The Hon. I. GILFILLAN: I tend to favour the Hon. Mr Griffin's amendment, but what penalty would there be for what would be his subsequent amendment regarding an officer of a prescribed association acting with reasonable care and diligence? Does the Hon. Mr Griffin have a penalty?

The Hon. K.T. GRIFFIN: I am informed that there is no specific penalty. If that is a matter of concern, one can put in the existing penalty of a division 6 fine. The existing penalty is $1 000, and I would have thought that $4 000, the division 6 penalty, is a bit high. If it makes the Hon. Mr Gilfillan happier to have some level of fine, I can include something when I reach that amendment.

The Hon. I. GILFILLAN: The issue is not just to make me happy, with due respect; the issue is, what is an appropriate burden to put on people who serve in smaller associations? Whether there has been any action, the fact is that we will be continuing—and with a pretty heavy penalty—the risk of a person being charged with not having exercised reasonable care and diligence in the local scout group and being exposed to a division 6 fine of $4 000. That is totally out of proportion.

The 'prescribed association' has been effective in making sure that those associations are substantial. People serving in them have a fair sense of public responsibility. If they are not able to exercise reasonable care and diligence, I have no problem with their being given a reasonable penalty, if it is proved against them. Division 6 seems reasonable to me.

Amendment carried.

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

Page 14—

Line 16—Strike out 'an advantage' and substitute 'any pecuniary benefit or material advantage'.

Line 21—Strike out 'an advantage' and substitute 'any pecuniary benefit or material advantage'.

This is a different area. During my second reading contribution I said that I was concerned about the reference to 'advantage'; that that could be not necessarily a pecuniary benefit or material advantage but might be just some advantage in terms of status. It may be in terms of being a springboard to local government or even to politics. I propose that there be some greater particularity given to this reference to 'advantage', so that an officer or employee must not make improper use and gain any pecuniary benefit or material advantage.

The Hon. C.J. SUMNER: No objection.

Amendments carried.

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

Page 14, line 23—Insert the following subclause:

(3a) An officer of a prescribed association must at all times act with reasonable care and diligence in the exercise of his or her powers and the discharge of the duties of his or her office. Penalty: Division 8 fine.

This penalty will accommodate the problem and put a sanction on an officer of a prescribed association not acting with reasonable care and diligence. We must remember that, even with the prescribed associations, there are people involved who do act honestly but who may not scrutinise all the papers as diligently as we may think they should. I would hate to think that they were put at risk of a heavy fine when the expression of intention is there. We ought to be after the people who are dishonest, who act improperly, and that is where the focus should be.

Amendment carried.

The Hon. K.T. GRIFFIN: My amendment relates to section 39b and is an area that concerns me considerably. I thought I would oppose the whole of 39b and leave the law as it is. Before I move any amendment, I should like to state the issues as I see them, the Attorney-General might care to respond and then I can determine whether to proceed with my amendment or to propose a more extensive amendment to delete the whole of section 39b. At the moment there is nothing in the Associations Incorporation Act that prevents an association from indemnifying its officers in relation to negligence or default. That is a quite proper position.

This clause will mean that no association will be able to indemnify any of its officers, and that will include committee of management, from any claim or any liability which may arise, say, from negligence. What we are talking about appears on the face of it to be quite serious, that is, negligence, default, breach of duty or breach of trust. However, in the sorts of organisations with which we are dealing it is quite possible that such a liability for one of those acts could arise, in a sense, inadvertently. I know that a number of organisations with which I have had some association have from time to time considered whether they ought to take out insurance, which is akin to directors' liability insurance for companies, to protect them against the unforseen.

I have been of the view that, generally speaking, there has been no development in the law relating to associations, until now, which would put members of the committee of an association at risk where the court may decide to extend the concept of negligence to include something which the committee of management did or did not do and which ultimately might have some link, even if a tenuous link, with an act which caused injury or loss. Notwithstanding that, some of those associations have decided that they will take out indemnity insurance to protect the members of committee of management, and they are the normal sort of directors' liability type of risks. However, this clause will prevent both that insurance being taken out and also the indemnity being given. I know that this is in the corporations law in relation to companies, but I am not satisfied that as a matter of policy, even as a matter of practicality, that this should be brought across into the area of associations.

I can acknowledge that no indemnity should be given in respect of criminal behaviour or in respect of something where there might be some hint of criminality, but where it comes to civil liability, because of the uncertainty of the cause and effect which might develop, I have a real concern about preventing this sort of indemnity. For example, if one is involved with an organisation which deals with members of the public, which may provide some form of service

and which might be remunerated, and a member of the public falls over on the school, hospital or club premises because the committee of management has failed to authorise a contract to repair the hole in the ground, the carpets or something like that, it is conceivable that, the way the law of negligence is developing, the individual members of the committee if, for example, they have had this issue on their agenda and have deferrred consideration of it and the injury has occurred in the meantime, may be liable in negligence. If it has been on their agenda and they have considered it and decided that there are other priorities for maintenance, and that this would be deferred until later in the year, in those circumstances it is quite conceivable that someone will argue—and it may or may not be successful—that there is then negligence or default on the part of the members of the committee of management.

It is unreasonable that they should not be able to be indemnified from the assets of a corporate body if a plaintiff decides to sue not only the incorporated body but the members of the committee of management individually. It may be that my suggestions are somewhat far-fetched; I do not believe they are and I know that they are issues of concern for a lot of people involved in the various organisations with which I have had some association.

On the one hand I would be inclined to delete not only the words which are part of my amendment, which I will deal with shortly, but also the rest of section 39b. However, if there is some small alternative, which is not so onerous, I would certainly be prepared to consider that. In the time I have looked at the Bill, I have not been able to come up with one and felt it to be preferable to leave it at the *status quo* rather than bringing in something which has not previously been part of the law relating to associations. Before I move any amendments, does the Attorney-General have any views on those issues and, if so, would he care to express them?

The Hon. C.J. SUMNER: This Bill follows a long established company law, which does not prohibit officers and auditors insuring against liability for neglect or default. However, this is subject to the proviso that a company does not bear the cost of insurance. It is a strange outcome that, if under the proposed amendment, an association is permitted to insure persons against a liability arising from actions detrimental to the association. That is the rationale for the provision. Section 39b is taken from the corporations law. The Government would want to persist with it, even because in quite a number of cases we are dealing with associations that are large, that do deal with substantial amounts of money and, while there are others which are relatively small, we think it is not inappropriate for this provision to apply to the smaller associations as well, but certainly it should apply to the larger ones. Notwithstanding what I have said about the rationale for the cost of the insurance not coming from the association, I am prepared to accept the amendment that the honourable member has placed on file but would want to retain the rest of the provision.

The Hon. K.T. GRIFFIN: That goes part of the way to addressing this issue. The matter needs to be addressed. Of course, its operation could be postponed until there has been an opportunity to inform associations of this fairly significant change in the law, but that is another issue. I will move my amendment and accept that the Attorney-General will address that issue before the Bill is passed through the Parliament. I move:

Page 14, lines 38 and 39—strike out 'not being a contract of insurance the premiums in respect of which are paid by the association'.

The Hon. I. GILFILLAN: I indicate my tentative support for this amendment. However, I am a little unclear as to the ramifications of section 39b to people serving in small associations; that is one of my ongoing concerns. I do not have the same degree of concern for officers who are working in prescribed associations, and I have said that before. However, if an association takes out a policy of public liability—and I am a little unclear about this—my interpretation would be that, even if that policy were in place, 39b, at least unamended, would leave any officer of any association liable to personal and individual prosecution or action for damages.

The Hon. K.T. GRIFFIN: That has been the concern that I have expressed all along, namely, that section 39b will hereafter expose not just the president, the secretary, the treasurer and the auditor but also all members of the committee of management to personal liability for which they will not be able to be indemnified by the association, even if they are acting in the interests of the association. They may take a decision to leave the hole in the ground as a matter of financial priority. It may not be and maybe that is not the best example to use, but if something needs to be done within the grounds of an association and in terms of priorities the association's committee of management says that it will or will not undertake that work, it is possible that a liability will result.

This section will expose, for the first time, those members of the committee of management to a liability which they previously could be indemnified against by the association. One will find that many constitutions of associations incorporated under this or previous Acts allow for this indemnity. Whilst I appreciate the support I have been given in relation to the amendment I moved, I still say there is a major issue of concern to be resolved and this needs to be addressed before the Bill passes.

Amendment carried.

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

Page 15, line 11—Strike out this line and substitute the following:

Penalty:

(a) if the offence is committed in respect of a prescribed association—division 7 fine;

or

(b) in any other case—division 8 fine.

This amendment is to establish a distinction in penalty levels.

Amendment carried.

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

Page 15, line 15—Strike out 'registered company auditor' and substitute 'person authorised under this Act to audit the accounts of a prescribed association'.

This is to open up the clause and make it consistent with an earlier provision in the Bill which allows the appointment of not only registered company auditors but others to undertake audits. It is quite reasonable that in relation to inspection of records a wider range of people ought to be able to be appointed to act as inspectors and, after all, it is in the hands of the District Court to make the appointment.

Amendment carried; clause as amended passed.

Clause 28 passed.

Clause 29—'Substitution of s. 41.'

The Hon. K.T. GRIFFIN: Before dealing with the amendment, I refer to the fact that in proposed section 40a reference is made to a Part 5.1 of the corporations law, which applies 'with such modifications, additions or exclusions as may be necessary for the purpose, or as may be prescribed, as if an incorporated association were a Part 5.1 body and as if that part were incorporated into this Act'. Will the Attorney-General indicate whether it is proposed to modify Part 5.1 by regulation, only because it seems to me that,

when one adopts particular provisions of either the companies code or now the corporations law, there is always an area of uncertainty where bodies such as the Australian Securities Commission might be referred to and which must be read obviously as though it were the Corporate Affairs Commission. Is it intended to prepare or promulgate regulations that might put a lot of these areas of doubt beyond doubt?

The Hon. C.J. SUMNER: Yes.

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

Page 15, lines 35 and 36—Strike out subsection (2).

Subsection (2) provides:

An incorporated association may not reach a compromise or enter into an arrangement with any member of the association.

I made the point in my second reading contribution that there can be a contract between a member of the association and the association, whether it is in relation to the provision of goods or services, and that might result in some liability being incurred by the association. In those circumstances, if the association gets into difficulty financially and wants to enter into a compromise or an arrangement, it seems that it is not unreasonable that that should be permitted. However, this provision actually prevents it. I do not understand the policy reason for that but, more particularly, even if there is a policy reason, I do not believe that it is appropriate in the circumstances of this legislation.

The Hon. I. GILFILLAN: Does the Attorney indicate acceptance of the amendment? The clause in the Bill struck me as being somewhat odd and there seems to be very little argument to support it.

The Hon. C.J. SUMNER: We are indifferent, Mr Chairman.

The Hon. I. GILFILLAN: The Attorney was given the chance to persuade me otherwise, but I think the clause in the Bill is silly and I very cheerfully support the amendment to strike it out.

The Hon. C.J. SUMNER: I am advised that when you understand it it is not silly. My officers have indicated that in fact the argument upon which the amendment is based is wrong, but because they do not care I will not waste the time of the Committee by going through it.

Amendment carried.

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

Page 17, after line 34—Insert the following section:

41aa. (1) The Minister may pay compensation to any association that has suffered loss in consequence of the incorporation of that association being obtained by mistake of the Commission.

(2) An application for compensation under this section—

(a) must be in writing;

(b) must be made in a manner and form determined by the Minister;

and

(c) must be supported by such evidence as the Minister may require.

It has always been my view that where an incorporation has been made as a result of a mistake by the commission there ought to be some provision for compensation. I was tempted to say that the Minister 'must' pay compensation, but I recognise that that would then make it a money clause or, even if not, it would require some appropriation. With this amendment I want to put on the record and in the legislation that, if incorporation is obtained by mistake of the commission, there is the option for compensation. It is still a discretionary matter for the Minister, but at least there is an avenue there for application. I think that is quite reasonable in the circumstances.

The Hon. C.J. SUMNER: I do not see the point of this amendment, but I suppose it would not be the first time.

The Hon. I. Gilfillan: I agree with you, and that would not be the first time.

The Hon. C.J. SUMNER: That there has not been a point in the Hon. Mr Griffin's amendment?

The Hon. I. Gilfillan: I do not agree with this one.

The Hon. C.J. SUMNER: The Government will oppose it, Mr Chairman.

The Hon. I. GILFILLAN: I am not persuaded that the amendment is an acceptable addition to the Bill. Although I am not totally unsympathetic to the motive, I oppose the amendment.

Amendment negatived.

The Hon. K.T. GRIFFIN: I refer to new section 41b, which deals with offences (page 18 of the Bill). Sections 589 to 596 and section 1307 of the Corporations Law are to apply. Under section 589 this applies to a company that has been wound up or is under official management and relates very largely to offences by officers where there is failure to disclose information, and so on. I had some difficulty ascertaining the penalty for those offences. It may be that there is no penalty and that certain civil liabilities flow. Will the Attorney-General indicate what penalties are likely to be attracted by breaches of those particular sections of the Corporations Law?

The Hon. C.J. SUMNER: Parliamentary Counsel is looking at the issue. All I can suggest is that we provide an answer to the honourable member and if there is a problem we will try to fix it before the Bill is returned.

Clause as amended passed.

Clauses 30 and 31 passed.

Clause 32—'Defunct associations.'

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

Page 18, line 26—After 'dissolved' insert 'and any property which may have vested in the Commission under section 45 is revested in the association.'

Section 44 deals with defunct associations, and this amendment is to allow for the re-vesting of property that might have been divested from a defunct association.

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

Amendment carried; clause as amended passed.

Clause 33 passed.

Clause 34—'General power of exemption of the commission.'

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

Page 18, line 46—Strike out 'section is inserted' and substitute 'sections are inserted.'

In a sense this amendment is consequential on a later amendment that deals with immunity from liability. Probably this ought to be a Government amendment, but this point was picked up in the course of working through my amendments.

The later amendment provides that a person engaged in the administration or enforcement of the Act incurs no liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, duty or function under this Act. That liability lies against the Crown. That relates to officers. The first amendment really is consequential on that subsequent amendment. My second amendment relates to a two tier level of fines which is consistent with what we have been doing in the balance of the Act.

The Hon. C.J. SUMNER: No problems.

Amendment carried.

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

Page 19, line 15—Strike out this line and substitute the following:

Penalty:

(a) if the offence is committed in respect of a prescribed association—division 6 fine;

or

(b) in any other case—division 8 fine.

Amendment carried.

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

Page 19, after line 17—Insert the following section:

49b. (1) A person engaged in the administration or enforcement of this Act incurs no liability for an honest act or omission in the exercise or discharge or purported exercise or discharge of a power, duty or function under this Act.

(2) A liability that would, but for subsection (1), lie against the person lies against the Crown.

Amendment carried; clause as amended passed.

Clause 35 passed.

Clause 36—'Minutes.'

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

Page 19, lines 30 and 31—Strike out ', within one month after the relevant meeting is held.'.

This clause relates to the keeping of minutes. I believe that new section 51, which is proposed to be inserted, is too rigid in its requirements, because it provides that minutes of all proceedings are to be entered in books kept for that purpose within one month after the relevant meeting. My experience of many associations is that one month is much too restrictive. Sometimes it does not happen for quite a bit longer than that. I can understand that an association ought to keep its affairs in order, but 'within one month' is onerous, particularly because of the fine that follows. That is, an offence is created if it is not done within one month. I am seeking to remove the reference to one month. I will deal with the other amendments along with this one.

With respect to the keeping of minutes, I am seeking to provide that the minutes should be confirmed by members of the association present at a subsequent meeting and signed by the member who presided at the meeting at which the proceedings took place or by the member presiding at the meeting at which the minutes were confirmed. That introduces two things: it indicates that the minutes must be confirmed, which implies confirmed as a true record of the proceedings, and they must be signed by the person who presided at the meeting of which the minutes are a record or at the meeting at which the minutes are confirmed, and that is consistent with the Bill.

Later amendments also deal with offences which fall into the same sort of pattern with which I dealt earlier. My main concern is about the minutes and that the Bill is too restrictive and needs to be liberalised. I do not think any harm will come from that, because there needs to be some flexibility in respect of the keeping and confirmation of minutes.

The Hon. I. GILFILLAN: I support the amendment, which appears to me to be a minor amendment, but possibly the words 'confirmed by the members of the association present at a subsequent meeting, should read 'confirmed by the members of the association present at the subsequent meeting' so that there is some obligation for the minutes to be confirmed within reasonable bounds.

The Hon. K.T. GRIFFIN: I really would prefer to leave it open. I appreciate the point being made by the Hon. Mr Gilfillan, but it may be that there is a general meeting this week and another one next week and, if you say 'the' subsequent meeting, it then has to be done at the next meeting. I know of many associations where the minutes are written up maybe some weeks or even a month or so later, because an office holder is absent. I do not see that that causes any problem. I would prefer to leave the amendment in the form in which I have moved it.

The Hon. I. GILFILLAN: I am interested to hear what the Attorney has to say about it. The wording does leave it virtually open ended. An association of sloppy habits may not confirm minutes of meetings until 12 months later. There is nothing that would oblige them in having any diligence in getting the minutes completed and signed. I am not sure that that seems to be a reasonable procedure. I know that the minutes of an annual general meeting in some organisations can be confirmed only at a subsequent annual general meeting, and that means that they must skip several meetings of the association, maybe on a regular monthly basis. I feel that the one month period in the Bill is much too restrictive for the host of smaller associations. I am uneasy that the wording of the amendment is very open ended, with virtually no pressure for the minutes to be confirmed.

The Hon. C.J. SUMNER: The Government opposes this amendment. It believes that the keeping of minutes is an important aspect of an association's activities and can be critical, especially with large associations, in the enforcement of the provisions of the Act. The provision that we have included is adapted from the legislation in New South Wales, where it would seem to be satisfactory.

The Hon. K.T. GRIFFIN: I acknowledge the point made by the Hon. Mr Gilfillan that it is rather open ended, but it does place an obligation to keep minutes and to have them confirmed at a subsequent meeting. Whether it is an annual meeting or some other meeting, it seems to me that no great problem is likely to arise if there is that open ended provision. This is the first time that there has been any reference to minutes in the Bill, and that alone should enable those who have responsibility for incorporated associations at least to note that there is now an obligation to keep the minutes and for those minutes to be confirmed at a subsequent meeting.

The problem with the Bill is that the minutes of all proceedings of general meetings and of meetings of the committee are to be entered within one month after the relevant meeting, and those minutes are to be signed by the member of the association who presided at the meeting in question or by the member of the association who presides at the next succeeding meeting. It is all very well to get the presiding member to sign them, but what does that mean? That, too, is left open. At least under my amendment the minutes are to be confirmed. Some rules of association provide otherwise, but it is normal that the minutes are confirmed by members and not merely by the presiding officer.

Some constitutions I have seen do allow the presiding member to sign the minutes as a true and correct record, but at least he or she is signing them as a true and correct record. If you leave the Bill as it is, your annual general meeting minutes will have to be entered within one month and signed at the next succeeding meeting, which might be an ordinary general meeting and not an annual general meeting. For what purpose are they signed?

It may be implied that it is to be confirmed as a true record, but that does not mean anything. I know it is relevant in relation to proof of matters later, but I should have thought that the reason ought to be expressly stated in this provision. I prefer the amendment I am moving, which gives flexibility and which will not lead to any evil, because there has been no provision in this Act so far. At least this alerts associations that that is their obligation and, if the inspector comes and says, 'Where are your minutes?'

and they are not there, obviously an offence is committed. I think it is adequately covered.

The Hon. J.C. BURDETT: I support the amendment. It has been pointed out by the Hon. Mr Griffin that in the past there has been no legal requirement at all yet, in my experience—and I have had considerable experience on all sorts of incorporated associations—at the beginning of any meeting there is the business of the confirmation of the minutes. It is always faithfully carried out. The minutes are always required to be confirmed by the members who were present at the previous meeting, and there has not been a problem.

If there has been any problem, I should like the Attorney to say what it is. As the Hon. Mr Griffin has pointed out, even with his amendment, now for the first time we have a requirement to keep minutes and a requirement that they be confirmed. To me, this is quite adequate. A question was raised by the Hon. Mr Gilfillan of minutes of the annual general meeting that are often not confirmed at the next monthly meeting.

I have found that it has been common practice that they are confirmed at the next annual general meeting but are read at the next monthly meeting for information. While I am sure that there are exceptions, I have never found a problem. I would be pleased to hear whether there has been a great problem. I do not think it appropriate that the impositions on incorporated associations, some of which are large and some of which are very small, should be too intrusive. If we pass the Hon. Mr Griffin's amendment, which for the first time imports an obligation to keep minutes and to confirm them, this will be quite adequate. I therefore support the amendment.

The Hon. I. GILFILLAN: I am inclined to support the first part of the Hon. Mr Griffin's amendment and delete 'one month', which I think is too restrictive, but not to support the latter amendments. Although the Bill is not perfect, as it does ignore the confirmation of the minutes in paragraph *(b)*, that seems to me to be an extraordinary omission. It does talk about the next succeeding meeting, and I believe that that is a proper discipline to put on any association, regardless of whether it is small or large.

If the amendments are moved separately, I will support the striking out of 'within one month after the relevant meeting is held' but oppose the subsequent amendments.

Amendment carried.

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

Page 19, lines 33 to 35—Strike out these lines and substitute the following paragraph:

(b) cause those minutes to be—

(i) confirmed by the members of the association present at a subsequent meeting;

and

(ii) signed by the member who presided at the meeting at which the proceedings took place or by the member presiding at the meeting at which the minutes are confirmed.

I am disappointed that the Hon. Mr Gilfillan is not supporting this amendment. It may be that he ought to support it so that it can be dealt with at a later stage. I still say that the obligation is to cause the minutes to be confirmed at a subsequent meeting—

The Hon. C.J. Sumner: We support that part.

The Hon. K.T. GRIFFIN: Very well—and to be signed by the member who presided at the meeting at which the proceedings took place or by the member presiding at the meeting at which the minutes are confirmed.

The Hon. I. GILFILLAN: It is of some interest to me that the Attorney indicated support for this amendment. I should like to repeat that I believe the amendment to paragraph *(b)* (i), 'confirmed by the members of the association present at a subsequent meeting' virtually leaves every association free to present minutes of any meeting at any later stage. There is no timing obligation as to when those minutes should be confirmed and presented.

Amendment carried.

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

Page 19, line 36—Strike out 'an incorporated' and substitute 'a prescribed'.

This amendment puts the penalty upon a prescribed association rather than any association, so that the focus is more on the large organisation rather than the small.

Amendment carried.

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

Page 19—

Line 39—After 'entered' insert ', confirmed'.

Line 42—After 'entered' insert ', confirmed'.

These two amendments are consequential.

Amendments carried.

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

Page 20, line 16—Strike out this line and substitute the following:

Penalty:

(a) if the offence is committed in respect of a prescribed association—division 7 finc;

or

(b) in any other case—division 8 fine.

This is designed to introduce the different levels of penalty for different levels of associations.

Amendment carried; clause as amended passed.

Clause 37—'Investing or depositing money with association.'

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

Page 20—

Line 20—After 'person' insert 'who is not a member of the association'.

Lines 25 and 26—Strike out 'in respect of an invitation that is extended to persons who are not members of the association,'.

Page 21, lines 34 to 36—Strike out subclause (9) and substitute the following subclause:

(9) This section does not apply to an invitation by an association for the investment of money—

(a) in a fund that was being maintained by the association on 1 March 1985;

or

(b) in accordance with an approval of the commission given before the commencement of this section.

The Hon. C.J. SUMNER: All these amendments are agreed to.

Amendments carried; clause as amended passed.

Clause 38 passed.

Clause 39—'Prohibition against securing profits for members.'

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

Page 22, line 2—Strike out 'Minister' and substitute 'commission'.

It seems to me that because there is power for the Minister to give directions to the Corporate Affairs Commission it is probably more appropriate for the commission to exercise the power of approving those situations where an incorporated association may conduct its affairs to secure a pecuniary profit for members of the association. It is not a big issue, but it is consistent with other amendments I have already proposed on other issues.

Amendment carried.

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

Page 22, line 6—Strike out this line.

This is a drafting amendment.

Amendment carried.

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

Page 22, line 7—Strike out 'Minister' and substitute 'commission'.

Amendment carried.

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

Page 22, line 11—Strike out this line.

This is a drafting amendment.

Amendment carried.

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

Page 22, lines 12 to 14—Strike out these lines and substitute the following:

(3) Subsection (2) does not apply—

(a) to reasonable remuneration of a member of the association for work done by the member for or on behalf of the association;

or

(b) to any payments or dispositions that are incidental to activities carried on by the association in accordance or consistently with its objects.

I was anxious to ensure that a recognition was contained in the Bill that the provisions of this new section 55 did not prevent arrangements being entered into between the member and association and, because potential conflicts of interest do have to be disclosed, it seems to me that this adequately protects members and provides for disclosure.

The Hon. C.J. SUMNER: I have no objection.

Amendment carried.

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

Page 22, lines 18 to 20—In subsection (5), strike out 'Minister' three times occurring and substitute, in each case, 'commission'.

This is a consequential amendment.

Amendment carried; clause as amended passed.

Clauses 40 to 45 passed.

Clause 46—'Substitution of section 62.'

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

Page 25—

Line 24—Strike out 'public' and substitute 'private'.

Line 26—Strike out 'private' and substitute 'public'.

These amendments are consequential upon each other. I did say that where there is what amounts to a special examination of a member of the committee of management, although for comparison it may be appropriate for such examinations to be held in public, it is quite inappropriate for associations. I move to ensure that they are generally held in private but may be held in public if the court orders.

The Hon. C.J. SUMNER: Agreed.

Amendments carried; clause as amended passed.

Clause 47—'Evidentiary provision.'

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

Page 29, after line 23—Insert the following paragraph:

(ab) that an association is or was at a specified time a prescribed association;.

This amendment relates to the issue that was dealt with yesterday of problems in the division of the associations between those prescribed and those otherwise prescribed and in the differential penalties which flow from that division, and the consequent problem of determining from an evidentiary point of view whether not at the time of the commission of the offence the association was prescribed. So, two amendments are on file: one relates to the definition of prescribed association in clause 3, which we will have to recommit; and, secondly, this amendment, which enables an assertion to be made in a complaint that an organisation is or was at a specified time a prescribed association. That assertion in the complaint will stand unless there is proof to the contrary.

So, if the association was charged, it was disputed that it was a prescribed association, and it wanted to get into the lower category of penalties, it would have to attest that assertion in the complaint. It is a common method that is used as an aid to establishing an offence. Indeed, other matters can be alleged in the complaint which are taken as established unless it is proved to the contrary. This amendment merely adds another issue that can be asserted in the complaint as established as fact unless proved to the contrary, and assists the evidentiary problems that we outlined yesterday in determining whether an association was a prescribed organisation or an ordinary association for the purposes of prostitution and, therefore, for the purposes of penalties which are now different as between the two classes of association.

The Hon. K.T. GRIFFIN: I acknowledge that what the Attorney-General is doing is quite reasonable in the circumstances. I certainly have no objection to it.

Amendment carried; clause as amended passed.

Clause 48 passed.

Schedule 1 passed.

Schedule 2.

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

Page 32—Strike out the following lines:

Section 35 (1) Strike out 'shall' and substitute 'must'.

Section 36 (1) Strike out 'shall' and substitute 'must'.

Section 39 (1) Strike out 'shall' and substitute 'must'.

These amendments are not really proposed by me, but they are part of a statutory provision, and I suppose it was more convenient for me rather than anybody else to move them. In those circumstances, I am happy to move them. It brings the language into some consistency. On page 32 I see reference to 'section 47 (7)'. It should be 'section 46 (7)'.

The CHAIRMAN: It is a clerical error that has been noted and it has been rectified.

Amendments carried; schedule as amended passed.

Title passed.

Bill recommitted.

Clause 3—'Interpretation'—reconsidered.

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

Leave out paragraph *(a)* of the definition of 'prescribed association' and substitute the following paragraph:

(a) that had gross receipts in that association's previous financial year in excess of—

(i) $200 000;

or

(ii) such greater amount as is prescribed by regulation;.

This is an amendment to the definition of 'prescribed association', as already explained.

The Hon. K.T. GRIFFIN: I am relaxed about it, but has the Attorney-General considered that this means that if an association in this year has gross receipts over $200 000, as I understand it, it will be next year that the accounts will be required to be audited and statements lodged? I may have misunderstood the drafting. If it is wrong, that is fine, but I have not had time to consider it in detail.

The Hon. C.J. SUMNER: The intention is that the obligation to audit would arise at present in this financial year in relation to the books of the previous financial year.

Amendment carried; clause as amended passed.

Clause 15—'Contents of rules of an incorporated association'—reconsidered.

The Hon. K.T. GRIFFIN: I moved an amendment, which was defeated, and it related to things which must be contained with sufficient particularity in the rules of an association. One of those was membership. I sought to provide an amendment by inserting 'in the case of an association that has members', so that the membership in the case of an association that has members should be dealt with with sufficient particularity and certainty. I made the point that we did accommodate those associations that did not have members when we debated the principal Act in 1985. There are already provisions in the principal Act which acknowledge that there may not be membership of an association, and I refer specifically to the definition of 'special resolu-

tion', and to section 35 in relation to an annual meeting, which is related also to section 39 (6). That section provides:

This section does not apply to an incorporated association where the rules of the association do not provide for the membership of the association.

You have in the definition of 'special resolution' two paragraphs, one where the rules of the association provide for the membership of the association, and a special resolution is one dealt with in a particular way at a duly convened meeting of the members, and paragraph *(b)*, where the rules of the association do not provide for the membership of the association, a resolution passed in a certain way by members of the committee. If we do not acknowledge that situation in this clause 15 amendment, we are acting in contradiction of the provisions already in the principal Act. I therefore move:

Page 7, line 5—After 'membership' insert 'in the case of an association that has members'.

In so moving I hope that the Attorney-General has an opportunity to consider the matter further and acknowledge that, because of the provisions already in the principal Act, my amendment is not inconsistent with it and acknowledges the *status quo*. I move it in that form and hope that there has been a reconsideration.

The Hon. C.J. SUMNER: We really do not care—we have given up. There is no point; it does not matter; no-one cares less. We cannot understand what the honourable member is on about. If he wants it, who cares?

Amendment carried; clause as amended passed.

Clause 27—'Insertion of new divisions'—reconsidered.

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

Page 15, line 20—Strike out 'registered company auditor or' and substitute 'person authorised under this Act to audit the accounts of a prescribed association or a'.

This amendment makes it consistent with an earlier amendment that we moved.

Amendment carried; clause as amended passed.

Bill read a third time and passed.

STATUTES AMENDMENT (SENTENCING) BILL

Adjourned debate on second reading.

(Continued from 12 February. Page 2666.)

The Hon. K.T. GRIFFIN: I support the Bill, which seeks to do a number of things. Whilst it is essentially a Committee Bill, I think it is important to relate the Opposition's position on each of the matters that are addressed in it. The Bill allows a court which convicts a person of multiple offences against the same provision of an Act to impose one penalty in respect of all the offences. That is a reasonable approach. I think it is partly designed to overcome the problem (to which I referred last weekend) that is experienced by judges, lawyers and others in interpreting the parole law. I think that the provisions will certainly overcome the problem of dealing with multiple offences, but that is only one part of a wider problem.

The Bill increases the options that are available to a sentencing court where a prisoner is subject to an existing non-parole period but where the sentence is to be followed by a Commonwealth minimum term. The Commonwealth has initiated and passed legislation which has been described by Senator Tate as 'truth in sentencing legislation', and in that respect has imposed minimum terms so that everybody knows where they stand in relation to the minimum time that a prisoner is to serve a sentence. We support the proposition that there has to be consistency between State and Federal law, thereby allowing prisoners, correctional services officers, courts and others to know when one sentence expires and another commences, and which is being served first and which is being served later.

A new concept is being introduced into the legislation which grants a court the discretion, where a person is in default of payment of a fine arising from an offence involving the use of a motor vehicle, to disqualify the person from holding or obtaining a driver's licence until the fine has been paid. These amendments apply not only to adult courts but also to children who do not pay fines imposed by the Children's Court. The mechanism for doing this is through the Registrar of Motor Vehicles, but I think this is likely to cause some difficulty, because the Registrar of Motor Vehicles has to cause written notice of disqualification to be given personally or by post to the person in default, and the disqualification takes effect seven days after the notice is given unless the sum in default is paid before that time.

I think there are two problems with that, one being the difficulty of service by post where the defendant may not receive the notice. It may be that the defendant is interstate on holidays, in the country working or on an oil rig—who knows? In those circumstances, if they are working they ought to be paying their fines but, if they are away, the period of seven days is quite unreasonably short and ought to be extended. Even a period of 14 days is, I suggest, too short and probably a period of something like 28 days would be a more appropriate timeframe.

A court may exercise the power to disqualify a person from holding or obtaining a driver's licence until the pecuniary sum has been fully satisfied, rather than issuing a warrant of commitment, and also may revoke the disqualification, even if the amount of the fine is not paid in full, but substantially reduced, if the court is satisfied that continued disqualification would result in undue hardship to the person.

One of the concerns is that the court has no initial power to suspend the operation of a disqualification if there is actual hardship, even though the sum may not have been substantially reduced. The point has been made to me by legal practitioners that, whilst the additional means of compelling payment of fines is acceptable, it is, nevertheless, likely to create hardship, and a vicious circle may develop where a person may lose their licence through inability to pay the fine, then may lose their job and therefore their ability to earn, if dependent upon the licence for employment. In those circumstances there is a vicious circle—no licence, no job and no income—the disqualification is unlikely to be lifted, and because the court may only revoke the disqualification when the payment of the fine has been made or where it has been substantially reduced, it seems that this issue of hardship will continue to create problems.

The other area that my colleague the Hon. Diana Laidlaw will touch upon is the issue of hardship licences, which matter has already been raised with the Attorney-General both in questions and by lawyers, particularly those in country areas. The Bill allows the court to issue a warrant immediately for imprisonment if it suspects that the person may abscond without paying a fine imposed by the court. That is a reasonable provision, as is the amendment to the Correctional Services Act to allow remission credited to a prisoner who is serving a non-parole period to be credited both against the non-parole period and the head sentence, because of the difficulties currently being experienced with the remission not being applied to the head sentence.

Power is to be given to appropriate court officers to deal with matters such as the issue of warrants for sale of land and goods, the issue of warrants of commitment, and to

exercise some discretion in relation to these matters; and they are to be exercisable by the Sheriff and clerks of court.

There is a provision which will enable the Parole Board and the Training Centre Review Board to vary or revoke a condition of a release on licence and to cancel release in relation to a habitual offender of their own motion, but they must notify the Crown and the offender before that is done and consider any submissions received from both or either of them. Presently, the boards do not have power to act on their own volition.

The Parole Board is given power to apply to a sentencing court for a non-parole period to be fixed in respect of a prisoner. In the previous Bill introduced in about March 1991, that power was to be exercised by the Crown. I took some exception to that because the Crown is also prosecutor, and I thought there would be a conflict. In addition to that, I took the view that, if a prisoner did not want to apply for a non-parole period, why should the Government intervene?

I am satisfied that, if the Parole Board exercises this power, that is appropriate. Apparently, it will affect some five life sentence prisoners who do not have non-parole periods, and four of them refused to apply to a court for such a period to be fixed. The only issue I raise in relation to that is that, whilst the Chairman of the Parole Board can make the application, I believe it important also that the Crown be officially notified of such an application so that representations can be made by the Crown as much as by the Chairman of the Parole Board in relation to such an application.

The court before which a community service order is ordered is to be given power to extend by no more than six months the period within which the community service is to be performed. There is no power presently to do this, and we support that added discretion in the court. We also support power being given to the Minister to approve circumstances in which a probationer can be required to perform more than eight hours of community service on any particular day. That will facilitate those community work tasks which take those workers into country areas frequently for more than eight hours in each day.

The Bill seeks to give power to the Minister to cancel unperformed hours of community service if there has been substantial compliance with the order or bond. The second reading explanation indicates that there is no intention of this power being used to evade the obligation, but I suggest that this power ought not to be exercised by the Minister other than in circumstances where maybe 1 per cent of the hours ordered could be cancelled to allow the Minister discretion to deal with day-to-day administrative difficulties which might arise. Anything more than some fixed percentage, such as 1 per cent, should really be determined by the court which imposed the penalty in the first place.

The Bill addresses issues of courts of inferior jurisdiction being presently required to remand probationers who have reoffended to be sentenced by the superior court, being the court which fixed the original sentence. This provides for the lower courts to sentence for the further offence and even for breach of bond proceedings to be instituted in the probative court of superior jurisdiction. We have no difficulty with that.

One area of concern is that the Sheriff or a clerk of court is permitted to make an order or decision in relation to a warrant of imprisonment or other warrant. Presently there is a right of review, but the Bill allows this right to be abrogated by rules of court or by regulations. I support the right of review. I do not believe that this ought to be abrogated by rules of court or regulations, and we will specifically oppose this provision.

Other procedural matters are dealt with in the Bill, most of which merely tidy up the principal Act and allow some flexibility in the administration of community service orders imposed by the Parole Board for courts in dealing with a breach of bond to extend community service and related issues. Subject to those matters, upon which there are likely to be amendments, I indicate support for the second reading of the Bill.

The Hon. DIANA LAIDLAW secured the adjournment of the debate.

SURVEY BILL

Adjourned debate on second reading.

(Continued from 18 February. Page 2842.)

The Hon. R.I. LUCAS (Leader of the Opposition): I rise on behalf of the Liberal Party to support the second reading of the Survey Bill. At the outset I must confess that just on one week ago I knew very little about the survey industry. One week later I know a little more, although certainly in no way could I profess to be an expert on the industry. However, I have had the benefit of some discussion with representatives of the various associations and institutions, and one or two other people who know a bit more about the industry, and I am in a position this afternoon to indicate the position of the Liberal Party in relation to this measure.

The objectives of the Bill, which in broad terms the Liberal Party supports, are: to vest control of the registration and licensing of surveyors with the South Australian division of the Institution of Surveyors, Australia. Part of that objective of the Bill entails the abolition of the present Surveyors Board. The second objective is to establish the Commercial Tribunal as the appropriate body to consider disciplinary actions against registered and licensed surveyors. The third objective is to make provisions relating to the surveying of land boundaries.

The main features of the new Survey Act are as follows: the powers of the board for registering, licensing and investigating complaints against surveyors will be transferred to the South Australian Division of the Institution of Surveyors Australia; the powers of the Surveyors Disciplinary Committee will be transferred to the Commercial Tribunal; the Bill will provide that only licensed surveyors or persons under the supervision of a licensed surveyor will be able to place a survey mark or carry out a cadastral survey for fee or reward; it will provide that it is an offence for a person to hold out as, or use, the expressions 'registered' or 'licensed' surveyors unless registered or licensed under this legislation; and it will provide that a surveyor cannot practise surveying unless covered by professional indemnity insurance.

So, in broad terms, the Bill attempts some form of deregulation of the industry, although I will comment further on the actual practice as to how much deregulation of the industry there might be. There certainly is deregulation from the viewpoint of the abolition of some existing bodies. The Surveyors Board and the Surveyors Disciplinary Committee will pass from existence. A new advisory committee will be created. The Commercial Tribunal, which I think was established during the period of the Tonkin Government from 1979 to 1982, will take over the powers of the former Surveyors Disciplinary Committee.

From discussions with industry representatives, I found that their views on some aspects of the Bill vary pretty widely. Certainly, it is true that, in large part, most of the

industrial bodies support the general thrust of the changes proposed to the Survey Act, so I do not think that there is much widespread trenchant opposition to the new legislation. In broad terms, I think much of it is agreed to. However, some aspects of the legislation have attracted vigorous debate over the past two or three weeks, and some widely differing views are being put to members.

I think it is fair to say that the Liberal Party has not been backward in coming forward in criticising this Government for not consulting industry before it introduces legislation. To be fair to the Government, that is not the case in relation to this piece of legislation—there has been wide consultation. As my colleague the Hon. David Wotton indicated, as the shadow Minister responsible for this legislation he was frustrated to a certain degree because after widespread consultation over a long period it was only at the death knell prior to the debate in the House of Assembly that, suddenly, moves were made by significant elements within the industry to amend some parts of the Survey Act.

As my colleague the Hon. Mr Wotton indicated during the debate in another place, not only was it frustrating but it made it enormously difficult for him as shadow Minister and for the Liberal Party as the alternative Government to do justice to the consideration of what is difficult legislation if you do not happen to be a practitioner in the survey industry. After such a long period of consultation with Government of four to five years, at the death knell in the last couple of days—and I think in the Hon. Mr Wotton's case it was on the day of the debate in another place—a significant change in the attitude of one of the major industry bodies was announced. That certainly is frustrating and not conducive to sensible and rational debate on legislation in the Parliament.

I suppose it is fair to say that one of the advantages of the bicameral system in South Australia as opposed to Queensland is that after the passage of the Bill in another place there was at least a further period for debate, discussion and refinement of amendments and time for members to discuss some of the changes suggested by one of the industry bodies. As I will indicate later in my second reading speech and a bit more fully in Committee, there has certainly been an attempt by the Liberal Party to consider further its position in relation to one of the major points of contention in the Bill. We will not move the same amendment in relation to one of the clauses but will seek the concurrence of the Legislative Council to a different way of amending that provision.

As I have indicated, there was widespread consultation as far back as 1987. The Green Paper on proposed amendments to the Surveyors Act 1975, the State Survey System and Self-Regulation of Surveyors, was prepared by the Surveyor-General of South Australia. I do not know whether the Surveyor-General of 1987 is the same Surveyor-General of 1992, but that document was prepared by the Surveyor-General. On page 3 of the green paper the three broad options that the Government wants to consider for the survey industry are outlined as follows:

> Three basic alternatives for achieving objective (1), namely, the assurance of appropriate standards of competency and professional conduct, have been identified. These are:
>
> 1. Maintain the present *status quo*, with surveyors being controlled by a surveyors board as set out under the provisions of an Act similar to the Surveyors Act 1975.
>
> 2. Maintain the Surveyors Board as the body to register surveyors, but transfer to the profession the responsibility for ensuring the proper professional conduct of surveyors;
>
> 3. Transfer all of the present responsibilities of the Surveyors Board to the profession.

I do not intend to delay my contribution by going through all three alternatives which were considered by the Government and which could be summarised as *status quo*, partial self-regulation or self-regulation. Clearly, the option adopted by the Government, as reflected in this legislation, was option 3, which was described as self-regulation by the industry.

In general terms, the Liberal Party supports the Government and industry choice of option 3 as outlined in the green paper as, in general terms, we support the philosophy embodied in that alternative. The official views of the two major associations and institutions have been relayed to the Liberal Party. On 17 February 1992 I received a letter from the President of the Institution of Surveyors, which reads as follows:

> I am writing to you in regard to the proposed Survey Act which has just passed through the House of Assembly. The Institution of Surveyors, which has a membership of over 90 per cent of the surveyors in this State, unreservedly supports this Act. This Act has been widely discussed within the institution, in committee meetings and at general meetings of members, over the last three years during the Act's formation.
>
> As President of the South Australian division of the institution, I respectfully seek your support to ensure the approval of this Act.

It is quite clear that the Institution of Surveyors is almost 100 per cent behind the Government in relation to the implementation of this legislation. I understand that the institution has a membership of around 200 which, according to the letter, constitutes over 90 per cent of the surveyors in the State.

The other industry body is the Association of Consulting Surveyors South Australia Inc. That consists of the principals of 35 or 36 companies involved in the survey industry, approximately 25 of which are represented by this association. The most recent correspondence received by the Liberal Party in relation to the general attitude to the Bill came from John Jamieson, Executive Officer, on 11 February, reads as follows:

> Dear Mr Wotton, I refer to previous correspondence from the President of the association, Mr Alan Olden, re this Bill. At a special general meeting held on 10 February 1992 to discuss the Bill, members suggested the following amendments:.

Some two and a half pages of suggested amendments to the Survey Bill are made by the Association of Consulting Surveyors. There might have been a previous piece of correspondence from the association to the Government which might have indicated the association's broad support for the legislation. If that were the case, there seems to have been a move from that position of broad support to one of supporting the Bill with a series of amendments, some minor but some quite significant.

As I said, that letter arrived at the death knell before the debate in the House of Assembly, and made it difficult for the Liberal Party and for my colleague the Hon. David Wotton, in particular, to seek at that late stage to consider the views of the association and to translate into legislative form those amendments with which the Liberal Party agreed. The Liberal Party did not support all the amendments. In broad principle, we supported some of them but, at that late stage, it was difficult to try to piece together the legislative amendments. As I said earlier, we will tackle one or two of those issues in a slightly different way in the Legislative Council.

I will raise a number of issues during the Committee stage of the debate, but three or four major concerns have been raised with me by practitioners in the surveying industry that I will outline at this stage. The first issue was relayed to me in the early hours of one morning last week when I was running around Hazelwood Park with 40 other unfit, middle-aged business people and executives. I happened to be jogging with a surveyor who said he was very concerned

about the Surveyors Act and that it was about time the Liberal Party did something about it. In particular, he was very concerned about two or three major aspects of the legislation. His major concern related to what we were going to do about the significant increase in the powers of the Surveyor-General over the industry, which was part of the Surveyors Act. Being blissfully ignorant at 6.30 in the morning, other than concentrating on putting one foot in front of the other and knowing nothing of the Surveyors Act, I could not offer much by way of useful response. I have now had an opportunity to consider that matter and I believe that there is some cause for concern in relation to one aspect of the legislation, that is, the increased powers of the Surveyor-General. I will certainly explore that during the debate on clause 43 of the Bill.

As has been outlined to me, the industry is currently broadly controlled by Government regulations, which are issued in the normal way. The regulations outline how the surveyor should operate, procedures in relation to pegs and the way in which the surveyors go about their task of cadastral surveying. All those technical requirements of the industry are covered by the regulations. I am advised by one member of the industry that in his view there would not be one surveyor in South Australia who was not in breach, at least in part, of some aspect of the present regulations. When I pursued that matter with that surveyor, he was not very willing to come forward with examples of breaches, but said that in many cases they might be only minor breaches or quite technical breaches of the regulations. Nevertheless, he maintained his view that there would not be a surveyor in South Australia who was not in breach, at least in part, of the regulations. He expressed frustration about the state and nature of the regulations that exist for the industry and about the process that he saw as necessary to amend those regulations whenever change was sought.

As a result of that, he was quite favourable to the notion of abolishing all regulations and replacing them with a system envisaged in the legislation, where a public service department, through the Surveyor-General, would issue survey instructions. The advice provided to me by Government advisers was that, in broad terms, when the regulations were abolished all the guidelines that existed within the regulations would be transposed into the new survey instructions to be issued by the Surveyor-General.

According to that advice, in broad terms whatever the guidelines are for the industry, they would be transposed into guidelines which would be issued under survey instructions. Obviously, if there is some problem with the regulations at the moment, and, if those regulations are to be maintained, they will have to be amended or new regulations that take into account those minor changes will have to be issued. If we move to a system of survey instructions, it will have to incorporate those minor changes as well. If the Government's position is that a certain amount of regulation of the industry is achieved at the moment through the existing process and if all we are doing here is changing the form of regulation so that, instead of doing it by the regulation process we do it by the survey instruction process, in real terms, in relation to what we would understand as regulation of the industry, not much deregulation is really envisaged under these changes. It is then a question of the strengths and weaknesses, the advantages and disadvantages, of the two methods of regulation of the industry, whether it be by regulation or by survey instruction.

As a general philosophy, the Liberal Party has always supported the view that these sorts of controls ought to be achieved through the regulation-making process rather than through proclamation or through, as in this case, a survey instruction issued through the Surveyor-General. There is a simple reason for that, that is that, given the regulation-making process of the Parliament, the Parliament retains some power of control. Thus, if the community or the industry is upset with a new regulation, it can lobby the Parliament and, if it is supported by a majority in one House of Parliament, that regulation can be disallowed.

If we move to a system of survey instruction, there is no such protection either for the survey industry or for the consuming public—if I can put it that way. So, whilst there must be consultation with an advisory committee if, in the end, the Surveyor-General or the Government issues new survey instructions and if the survey industry is implacably opposed to those new instructions, the industry or the Parliament can do nothing. Equally, if the Surveyor-General, together with the two industry bodies, were to negotiate a cosy deal which might be to the satisfaction of both the Surveyor-General's unit and the practitioners in the survey industry but the effect of which might be detrimental to the general community, again, there would be no avenue for the community to protest about those new survey instructions.

Under the Government's envisaged legislation, if the survey industry and the Government are happy, those instructions will go through; if the general community is unhappy, if people think that the new survey instructions may result in some new requirement that will mean increased costs or if there is some other change in the survey instructions that will affect the public in some way, under the Government's Bill, there is no avenue for the public to protest. That is the great strength of the regulation-making process of the Parliament. It is the great weakness of the proposal regarding survey instructions in this case that there is not that possibility for the public to lobby their representatives in Parliament and to protest.

I accept that survey instructions, potentially, can be achieved more quickly and neatly for the industry. If some technical change was necessary, potentially that could occur quickly. I must argue, though, that there is no logical reason why that ought to be, other than the question of the disallowance process of the Parliament. In my view, it is no harder to have consultation, to draft and to issue a new regulation relating to the industry than it is to have consultation, to draft and to amend a new survey instruction.

That process of deciding how one might change the regulation or survey instruction, in my submission, ought not to be much different at all. I do concede that a survey instruction, once issued, is set: a regulation, once issued, must run the gamut of State Parliament but, of course, regulations take legislative effect as soon as they are issued, and the disallowance motion—which is rarely, if ever, carried by the Parliament (although many are moved)—may overturn a new survey regulation. I can understand industry bodies that have had many years of experience with regulations, in effect, saying, 'We are not very happy with the current situation, because it has proved to be cumbersome, burdensome and inflexible.' There are always problems when industries lobby for changes to regulations, and I suspect that there may be occasions when public servants blame Parliamentary Counsel for delays and when Parliamentary Counsel blame public servants for delays and, as a result of everyone blaming everyone else, what might have seemed a simple change in a regulation is held up. The industry may well be concerned about that sort of delay.

I suspect that, if this new change is implemented, it will be found that, whilst in theory survey instructions could go through quickly and neatly, the system will turn out to be a little burdensome and inflexible from the point of view

of the industry. There will have to be debate with the Surveyor-General's officers and perhaps with other public servants such as the Registrar-General and officers from other departments that are interested. There may also have to be discussions with Parliamentary Counsel. Whatever process of approval is followed, there will be some delay in the issuing of any new survey instruction. Nevertheless, to be fair to the industry bodies, their position is firm—to varying degrees—they would prefer a process of survey instruction and whilst, for the reasons that I have indicated (and I will further expand on them in Committee), the Liberal Party will move that the regulation-making power be maintained, it is fair to place on the record the attitude of the Institution of Surveyors and the Association of Consulting Surveyors. A letter I received on 26 February 1992 from the Institution of Surveyors states:

> Further to my letter of 17 February I wish to reaffirm the institution's desire to see this Act passed in its present format. The institution would be extremely concerned if the Act were to be changed to allow for the reintroduction of regulations.

I must confess that at that stage I had not yet had discussions with the Institution of Surveyors but, obviously, the industry grapevine works pretty quickly and it became aware that we were considering some change in our attitude in relation to regulations. Again, the position of the Institution of Surveyors is clear; it is unequivocal. It would prefer that the Parliament and in particular the Liberal Party did not proceed with that aspect of legislative change. On 26 February the Association of Consultating Surveyors wrote me a letter which arrived around lunchtime and which states:

> Thank you for your fax of yesterday evening listing amendments that you propose to move in the Upper House this week. I have discussed your proposed amendment to clause 43 with a number of members of my asssociation and the reaction has been somewhat varied.

It is fair to say that there has been no formal meeting of the executive, the committee or the association on my amendments, given the late stage of the debate: there was an informal debate or discussion with a number of the members. The letter continues:

> There seems to be some reluctance to head down the path of regulations due to the fact that the new Act has been based all along on the premise of self-regulation and hence the elimination of control by government through inflexible regulations. With the advent of survey instructions it is felt that there will be greater flexibility for the profession to work within the spirit of such instructions and amend or delete where necessary much easier than if by regulation.

The Hon. T.G. Roberts: Can you explain that?

The Hon. R.I. LUCAS: We had better ask the association. I know that there are mixed views within the association because some have expressed support for the proposition that we will be putting but, nevertheless, it is fair to say, having read that letter into *Hansard* (there is more that further explains their approach), that the official response from the Association of Consulting Surveyors to me was that it would prefer that we did not move to a position of regulation and that we stick with the position of survey instructions as envisaged by the Government in the Survey Act.

The second broad area of concern raised is that of the use of the term 'surveyor'. Again my colleague the Hon. David Wotton referred to this in his contribution in another place. Within the current legislation there is an attempt to protect the use of the term 'surveyor'. In clause 25 under the heading, 'Offence to hold self out as surveyor', without reading all the provision, it basically says that you cannot use the word 'surveyor' unless under certain circumstances you are given permission to use the term 'surveyor'. It has been the subject of much debate and controversy within the surveying industry broadly.

As I understand it, the engineering and mining surveyors were concerned with that aspect of the present Act and there are some 200 members in that association. There are some surveyors—members of the Association of Consulting Surveyors—who still strongly believe that in some way we ought to protect the use of the term 'surveyor' within the new Act. As far as trying to protect the use of the term 'licensed surveyor' or 'registered surveyor' in clause 16, the Bill does not provide any protection for the use of the term 'surveyor'. I understand the views of surveyors, but must confess that it would appear to be almost an impossible task to put into legislative form what they are seeking. There are so many other industries and persons who pass themselves off as surveyors of one form or another at the moment: health surveyors, food surveyors or market research surveyors. They may be called opinion pollsters—

The Hon. J.C. Burdett: Quantity surveyors.

The Hon. R.I. LUCAS: Yes, quantity surveyors, as my colleague Mr Burdett says. It is difficult to put into legislative form what my friends in the Association of Consulting Surveyors would like to do. In some part it is similar to other professions such as accountants. There has been a controversy in that profession for some time. We see the differences between accountants and the CPAs. The CPA argues that it represents the true accountants and advertises to that effect.

Nothing prevents certain persons with certain qualifications calling themselves 'accountants'. The same thing applies to the term 'engineers', to a degree. We have 'sanitation engineers' and all sorts of other engineers at the moment and, again, the engineers who have passed university degrees are concerned about the use of that term by others within the industry.

The Hon. T.G. Roberts: Garbologists!

The Hon. R.I. LUCAS: That is perhaps a better term than 'sanitation engineer', but it is not as fancy. All I think I can do during the second reading debate is record sympathy with the views of those in the industry but indicate that I do not believe there is anything we can do in legislative form to protect them. The view that I put to the industry is that I believe that they must in some way seek, in marketing, the term 'licensed' or 'registered surveyor', and market the fact that they are, in effect, a quite distinct group, able to do quite distinct things under the new Survey Act.

As with the CPAs in the accounting field, perhaps they ought to advertise in their own way. I am not suggesting television advertising, but they could advertise within the industry to highlight the distinctions within it, and the importance in certain cases of using a licensed or registered surveyor and not using someone who can call themselves a surveyor. The industry gave me an example where a surveyor who was not licensed or registered had, in effect, signed a certain certificate, in one case in relation to the siting of a building on a block in the city, and a finance company then lent money on the basis of that certificate. Of course, when a licensed or registered surveyor checked it, it was found that the surveying had not been done accurately and, of course, there were then significant legal problems in relation to the finance company and the financial deal that had been negotiated for that city construction project. So there are problems, and I accept that, but I think the industry will have to tackle it in a different way, and it is not something we will be able to resolve satisfactorily by legislative amendment.

The third and final area to which I wish to refer in the second reading stage is clause 31 of the Bill: 'Employment of licensed or registered persons by company'. Again, a submission at a late stage has been put to the Liberal Party that this provision is too onerous. The provision states:

A company licensed or registered under this Act must not, without the approval of the Institution of Surveyors, employ more surveyors than twice the number of practising surveyors who are directors of the company.

The view from some within the industry is that this does not exist at the moment and, if this provision was to be included in the new Act, it would cause significant problems for a small number of survey companies in South Australia. A number of companies have employed more than twice the number of practising surveyors than are directors of the company. So, if two directors of a company are practising surveyors, as I read this, you are not allowed to employ more than four practising surveyors.

As I said, some are very concerned about this provision. They argue that they will have to either significantly increase the number of directors of the company who are practising surveyors, or they will have to reduce the employment of the number of practising surveyors within their company to comply with this legislation. They also argue to me that, if this legislation stays in, it will be against the interests of young survey graduates coming out of universities and trying to enter the industry. They say that a number of firms have employed a number of new graduates over recent years and that, if people have to be laid off, they will be the ones who will be laid off by those companies. They say that survey companies will tend to look for more experienced surveyors rather than the newer graduates if this provision is incorporated.

I cannot vouch for the accuracy or otherwise of those claims, but I must place on the record the fact that—and I am not saying this is the official position of the association or institution—some people are concerned about this provision. Not being an expert in company law, on the surface of it I do not understand the legal argument for this provision. I have had the legal argument put to me by Parliamentary Counsel and others, but I still do not understand the need for this provision.

However, I am advised by my colleague the Hon. Trevor Griffin that this is a very common provision in legislation that regulates professions in South Australia and in other States. There is exactly the same provision in the Legal Practitioners Act and the Medical Practitioners Act and, I understand, in legislation covering a number of other professions. For those reasons, and acknowledging the fact that colleagues such as the Hon. Mr Griffin are much more expert in company law than I, I will not be seeking to amend this provision and will accept that it is accepted by Parliaments throughout Australia as being necessary for the regulation of professions and the protection of the consuming public.

They are the major issues that have been raised with the Liberal Party in the past week or so. I think it was important to place them on the record during the second reading, given the late stage of debate in the industry regarding this legislation. I will in Committee move some amendments relating to a number of other areas, and I will explain our position in relation to them at that stage. I support the second reading.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): In view of the time, I do not propose to respond to the honourable member, although I thank him for his comments. I imagine that a number of the issues he has raised will be dealt with in Committee, and I will leave any comment until then.

Bill read a second time.

HOUSING LOANS REDEMPTION FUND (USE OF FUND SURPLUSES) AMENDMENT BILL

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

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

That this Bill be now read a second time.

In view of the time, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

The purpose of this Bill is to enable the Government to put to effective use surplus funds previously tied up in the Housing Loans Redemption Fund and, in doing so, rationalise the two Acts concerned. The Housing Loans Redemption Fund was established in Treasury on 1 November 1962 following the enactment of the Housing Loans Redemption Fund Act 1962. The aim of the fund was to enable home buyers who were borrowing housing finance from approved authorities to obtain inexpensive State Government guaranteed life insurance cover for the amounts outstanding under their loans.

More recently cheaper and more flexible mortgage protection insurance has become available from SGIC and other insurers. The proposed closure of the fund to new members is, in effect, a formality given that no new members have joined the fund since 1985, and potential new members are being directed to other sources of mortgage protection insurance. Existing members of the fund will not be affected by the proposal. There is currently a significant surplus in the fund. The Public Actuary considers that up to $7 million could be transferred immediately from it. However, other than a specific requirement under the Cottage Flats Act, there is no provision in the Housing Loans Redemption Fund Act or elsewhere for the transfer of surpluses from the fund.

The Cottage Flats Act 1966-1976 provides for the payment of sums not exceeding $75 000 per annum from the Housing Loans Redemption Fund to the South Australian Housing Trust, for the purpose of building cottage flats to be let to persons in necessitous circumstances. The titles of flats built under the Cottage Flats Act are held by the trust. At today's prices, the $75 000 grant is no longer sufficient to fund the building of a group of flats, and the cost of keeping the separate accounts required under the Cottage Flats Act is substantial.

It is proposed that the Cottage Flats Act be repealed and its function be transferred to the Housing Loans Redemption Fund Act and strengthened by allowing the Treasurer to determine the specific amount to be transferred from the Housing Loans Redemption Fund to the Housing Trust via the Consolidated Account. The Housing Trust will be required to include details of the use of the funds in its annual report. These amendments to the Cottage Flats Act are intended to:

- free up currently underutilised funds for the benefit of the State;
- improve accountability and disclosure of the transaction to the Parliament and the public by transferring the funds through the Consolidated Account;
- improve efficiency in accounting for the funds;
- minimise the number of Acts on the statute books.

The proposed changes will have no effect on the Housing Trust's cottage flat tenants.

Clause 1 is formal.

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

Clause 3 inserts new sections 13 and 14 after section 12 of the principal Act.

Proposed new section 13 provides for closure of the fund to new contributors after commencement of the section. Subclause (2) provides for the terms of the Act to continue to apply to existing contributors.

Proposed new section 14 empowers the Treasurer to direct that amounts from the fund to be paid into the Consolidated Account.

Subclause (2) provides that the Treasurer may not require any payment from the fund except on the advice of an actuary that the balance of the fund remaining after such payment should be

sufficient to meet the liabilities of the fund under section 8 of the principal Act.

Subclause (3) provides for any such amount paid into the Consolidated Account to be paid to the trust, which must apply the amount to the building of cottage flats or other dwellings, to be let to persons in necessitous circumstances.

Subclause (4) provides for the automatic appropriation of amounts that are to be paid from the Consolidated Account.

Under subclause (5), the trust is required to set out in its annual report to the Minister details of its receipts and expenditure of the money paid from the Consolidated Account, and of building works carried out under the section.

Subclause (6) defines the term 'actuary' as a Fellow or Accredited Member of the Institution of the Actuaries of Australia and defines 'the trust' as the South Australian Housing Trust.

Clause 4 provides for the repeal of the Cottage Flats Act 1966.

The Hon. J.C. IRWIN secured the adjournment of the debate.

ADJOURNMENT

At 6.30 p.m. the Council adjourned until Tuesday 17 March at 2.15 p.m.