LEGISLATIVE COUNCIL

Thursday 30 April 1992

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

RACING (INTERSTATE TOTALIZATOR POOLING) AMENDMENT BILL

Adjourned debate on second reading.
(Continued from 28 April. Page 4442.)

The Hon. R.J. RITSON: This Bill joins the South Australian TAB pool with that of Victoria. I understand that the Bill is agreed within the industry and between the Labor Party and the Opposition. It has been fully canvassed in another place where it was supported by the Opposition. Because of the pressures on the sitting time of the Council, I see no point in recycling the arguments which led to that agreement. For that reason, I support the second reading and indicate that the Opposition will cooperate to expedite the Bill through its remaining stages without delay.

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

WORKERS REHABILITATION AND COMPENSATION (MISCELLANEOUS) AMENDMENT BILL

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. L.H. DAVIS: I move:

Page 1, after line 18—Insert—(2a) Sections 4 *(a)* and *(b)* will be taken to have come into operation on 19 March 1992.

This simply seeks to ensure that the amendment to the stress claim provisions in clause 4 will have taken effect on 19 March 1992, when the Bill was first introduced in another place. The Attorney would be well aware that there has been some publicity about stress claims in recent times. It is a particular difficulty in the public sector, where stress claims run at 3½ to 4 times the level in the private sector. It is remarkable to see that amongst the 110 000 State Government employees of this State there were more stress claims than in New South Wales, which has two million employed in the State Government sector and the private sector.

I take this opportunity to make some general comments. I do not necessarily expect a response to my specific questions; I accept that they can be taken on notice. I would appreciate the Government's advice as to what it believes will be the net benefit flowing through to employers from the Government's Bill now before the Committee. The Liberal Party believes this is a critical piece of legislation, which gives the Bannon Government a chance to put on record its support for business in South Australia. Earlier this week three major employer groups—the Chamber of Commerce and Industry, the South Australian Employers Federation and the Engineering Employers Assocation—met with the Premier and the Minister of Labour and insisted on fundamental reforms to the WorkCover legislation. In a media release the groups 'urged the Premier to commit the Government to urgent and far reaching reforms of the WorkCover system so as to reduce the excessive costs of WorkCover premiums'.

The Premier was also told that in order to re-establish South Australia's competitive edge the hard decisions that have been delayed for too long must now be taken. I note that although the Premier acknowledged the serious circumstances facing WorkCover, particularly in the light of the Supreme Court decisions regarding second year reviews, the employer groups were informed that the Government expected the second year review issue to be dealt with in this current session of Parliament.

The employers confirmed that the Government should, as a minimum, implement the select committee recommendations for reform immediately, together with the amendments to reinstate the original intention of the Act regarding second year reviews. Without immediate amendments, the employers claimed, the cost ramifications of the WorkCover system were horrendous, with additional costs of over $150 million being created that will be borne by the South Australian business community. They concluded their press release by stating:

> The need for legislative reform to WorkCover has been stressed by employers over two years. It is now time for the Government to act in order to re-establish confidence in the business community and assist South Australian industry to compete.

I put that on the record as the considered view of the key employer groups in South Australia after meeting with the Premier. The Liberal Party has accused the Bannon Government of being anti-business and in this debate today the Government has an opportunity to put to rest that serious allegation.

The Liberal Party has put amendments on file that represent the considered views of a dozen employer groups in South Australia. The Government has an opportunity to take South Australia from its position as by far the most expensive State in relation to WorkCover levies to a position where we are, at least, comparable with other States. The Liberal Party amendments, which will be debated today, have the effect of reducing WorkCover annual levy rates by at least 20 per cent. It is a dramatic change. It will save the 57 000 employers in South Australia—95 per cent of whom are small businesses employing 20 or fewer people—$60 million to $70 million. On my reckoning, the Government initiatives will save, at most, $15 million. The Attorney may not be in a position to comment on that. It is disappointing that we do not know the figure already, because with such basic and important legislation, which affects so many people in South Australia, I would have thought that the Government should insist on having an economic impact statement associated with this legislation. I am interested in the Attorney's response to that question.

The Hon. C.J. SUMNER: I will arrange for the Minister to provide information on that matter to the honourable member by letter. The Government opposes the amendment.

The Hon. I. GILFILLAN: It is probably helpful to make clear our position at this stage. I am a member of a select committee that has been studying WorkCover for over 12 months. As members would know, that committee recommended a Bill to make amendments to the WorkCover Act. I have undertaken to do whatever is necessary by way of amendment to bring the Government Bill into line with the Bill that was recommended by the select committee. I do not intend to support any amendments, other than purely procedural or facilitatory, that extend either the area in which the select committee Bill sought to make amendments or to make any more substantial amendment in areas where the committee Bill expressed an opinion. I want to emphasise to this Committee that I believe the WorkCover Joint House Select Committee is the proper forum for the objective debate and then recommendation for appropriate

amendments to the WorkCover Act. I am not convinced that there has been any further substantial discussion in the select committee that has led it to consider changing the recommended Bill.

I have respect for some of the observations that the Hon. Legh Davis has made with regard to the complexity and complications of the current WorkCover Act. I acknowledge that there are other areas that will need to be looked at by the WorkCover Select Committee and, in the fullness of time, there may well be further recommendations for amendment of the Act. Although from time to time it may be pumped up as if it were something of such urgency that it has to be completed the day after tomorrow; that is not true. Most of the decisions are for long-term implementation and effect. Most of them influence actuarial calculations, which are based, in a way, on decade time frames rather than month by month time frames.

I have said before, and it would be no surprise to members, that I believe the second year review is an important area in which the select committee made recommendations for amendment purely to clarify what was the quite clear intent when the original Act was passed in this place. With that in place, I have also said before that I believe the costs of WorkCover are along a track that can be expected to reach a fully funded situation within a reasonable period. With other measures that will no doubt be discussed further in this debate, there will be moves through bonus, penalty and other measures for efficiency and a reduction of accidents and through that track I think employers in South Australia can look forward to reduced premiums, but not at the cost of providing adequate compensation for injured workers.

I will therefore be looking for support from the Government for the modest amendments which I have on file to really tailor its Bill to match the select committee Bill. I believe there is no doubt that the public knows, this Parliament knows and the Government knows that it wants the Bill amended along the lines of my amendments at least, and concern has been expressed that the recent Supreme Court judgment may require even further adjustment, particularly in the area of the wording of the second year review.

So, there are no secrets in that. It is really just a question of whether the Government can be flushed out of the woodwork to put its support where it has already, in a round about way, indicated that it wants WorkCover to develop. The Premier has been ardent and repetitious in his emphasis that the WorkCover costs must not be, through their premiums, a disincentive for employers to set up business in South Australia, and that levies must come down. They will, and they have started to come down already. I have optimism for the WorkCover system. I think it is a good system; it is the best in Australia.

The Hon. J.F. Stefani: It's expensive.

The Hon. I. GILFILLAN: It is the most expensive, as the premiums are now. Part of that reason is my insistence that it be fully funded and that no financial games were to be played with artifically low premiums and expanding blowing out deficits, such as occurred in Victoria. Because of that, we do not have the potential SGIC/State Bank disaster pending. We have the best performing statutory corporate funds handled very competently and responsibly. There are many good things about WorkCover. That is something to appreciate, but I will be looking with keen interest for the Government's support of my amendments.

I do not intend to take up much time of the Committee by arguing specifically against the proposed amendments of the Hon. Legh Davis. I know that he will not take that as a personal slight on his own efforts because, as a fellow member of the committee, I know he has taken the moulding of WorkCover to its optimum level very seriously. I just happen to have some disagreements with him, but I do not challenge his intention in trying to improve the system. I will not support any amendments which go further from or are at odds with the select committee's recommended Bill. Therefore, I oppose the amendment.

The Hon. L.H. DAVIS: I am anxious not to prolong the debate. I simply do not want this occasion to be an opportunity where history is rewritten. We have the most expensive WorkCover legislation in Australia because the Australian Democrats and the Labor Party in 1986-87 combined to ram through the legislation that we are now debating. The Liberal Party has had a consistent position, that if you have expensive WorkCover, it is at a cost to employers of profit and, ultimately, jobs. The worker does suffer. In this fatuous world in which the Labor Party and the Australian Democrats move, they do not appear to understand that, without profits, there can be no pay envelopes.

I am disappointed to hear that the Australian Democrats are not prepared to support any amendments in view of the overwhelming and united view of all employer groups in South Australia. As I said in my second reading contribution, I have never seen a time when there is such unanimity amongst employer groups about what is wrong with WorkCover and what needs to be righted. We are in the depth of an economic recession where WorkCover premiums are for many small businesses the largest cost of labour. The point I made was that, of the 57 000 employers in South Australia, almost one-third of them from memory are paying at least 7.5 per cent in premium rates—a very high percentage indeed. It appals me to think that, when we do have the opportunity to consider these amendments, which have been carefully researched and which can be verified in every respect—basic matters that we will be debating over the next two or three hours—we miss that opportunity, because time is of the essence. The Hon. Ian Gilfillan should know that time is running out for many small businesses in South Australia in this terrible economic downturn that we are facing.

Amendment negatived; clause passed.

New clause 2a—'Preliminary.'

The Hon. L.H. DAVIS: I move:

Page 1, after line 19—insert new clause as follows:

2a. Section 3 of the principal Act is amended by inserting after subsection (8) the following subsection:

(9) For the purpose of determining what employment is suitable for a partially incapacitated worker, the following factors (and no others) are to be considered:

(a) the nature and extent of the worker's incapacity for work;

(b) the worker's level of education and skills;

(c) the worker's experience in employment;

and

(d) the worker's ability to adapt to employment other than employment in which he or she was engaged at the time of the occurrence of the compensable disability.

This new clause is in two sections. Because they are unrelated matters, they should be put separately. The first package, 2a *(a)*, *(b)* and *(c)* relate to journey accidents, and 2a *(d)*, which we can address after we have resolved the journey accident matter, relates to the second year review. Journey accidents account for a significant percentage of the moneys paid in levy rates, and the Liberal Party believes it appropriate to move for the deletion of journey accidents from the ambit of WorkCover.

Journey accidents represent about 10 per cent of claim payments made. By removing them from the ambit of WorkCover, the average levy rate could be reduced by 5

per cent. In other words, if we assume an average levy rate now of 3.5 per cent, that could be reduced to 3.325 per cent. In that, I am assuming that we can recover at least 50 per cent of the journey accidents from the compulsory third party fund. There have been a number of ludicrous decisions relating to journey accidents which could be best taken up by the third party system. We have a safety net in place with the compulsory third party fund.

We had an example of someone leaving their home to go to work. Whilst he was walking down the drive, the dog ran out and he tripped over the dog, spraining his ankle. It was held to be a journey accident. Obviously, employers have no control over journey accidents. In some places, we know that the employer registers and insures vehicles driven by employees, and the beneftis are then paid by WorkCover. We also have a discrepancy in the benefit levels for journey accidents between WorkCover and third party benefits. So, I urge members to support my amendment of section 3 of the Act.

The Hon. C.J. SUMNER: The Government opposes this amendment. It simply means that workers would not be covered for accidents that occur as part of a journey to or from work. The amendment would remove cover for workers who are injured during a temporary absence from the work place. Journey accidents have been covered by workers compensation now for many years; I am not sure when it was first introduced, but I would suggest it goes back three or four decades.

An honourable member interjecting:

The Hon. C.J. SUMNER: Two decades, then: it has been there a long time. The Government opposes the amendment.

The Hon. L.H. DAVIS: Could the Attorney-General indicate whether any other States have journey accidents fully covered by their WorkCover schemes?

The Hon. C.J. SUMNER: I do not have the facts in front of me, but my understanding, given some association I have had with this topic, also decades ago now, is that most of the States do have journey accidents covered by workers compensation.

The Hon. K.T. GRIFFIN: This is an issue on which I have very strong views, and I have expressed them on the occasions when this issue has raised its head in Parliament. My recollection is that the journey to work accident regime has not been in place for more than about 10 years—perhaps since the late 1970s, or 15 years. Certainly, it has been broadened by the Labor Government to cover more areas than it covered originally. The argument against it is quite simple, namely, that the worker is not under the control of the employer on the way to and from work. Diversions from the most direct course to work and a whole range of issues can impinge upon the worker on the way to and from work or the pick-up point for work, and it seems to me that it takes it out of the realm of the responsibility of the employer for the employer to have a responsibility at law for what the worker does on the way to or from work.

I think that recently there was even an incident where the worker driving up the driveway on the way to work has been subject to compensation. In my view, that is an extraordinary extension of the liability of the employer. There is not even any indirect control over what the worker does or does not do on the way to work; it is just not subject to the authority of the employer or the responsibilities of the employment contract. Logically and equitably there is just no sense in placing a burden upon an employer for something that happens on the way to work. Someone might fall off the train, have a motor vehicle accident or slip on the footpath; in all justice, how could an employer have the responsibility for the injuries which occur in those circumstances? That is why I have always been a very strong opponent of covering journey to work accidents at all, particularly as extensively as they are now covered.

The Hon. J.F. STEFANI: I do not want to prolong the debate but just to add to the comments of my colleague, the Hon. Trevor Griffin. The important part of this amendment also reflects that if a worker is injured on the way to work we have the problem that the employer who pays the levies is penalised by some sort of penalty system and that is attributed in some way to the negligence of the employer, which in fact is totally incorrect. If the employee trips over his dog on the way to work, it is hardly the responsibility of the employer, but the employer is penalised because their levy rate will become a penalty. There will be a claim and a penalty on the claim, yet the employer has nothing to do with it at all. That is a fact, because the penalty system is established on claims and the payment of claims.

The Hon. C.J. SUMNER: I am advised that that is not correct and that journey injuries are not taken into account in assessing the penalty or the bonus system for the WorkCover levies.

The Hon. I. Gilfillan: They've been specifically excluded.

The Hon. C.J. SUMNER: The Hon. Mr Gilfillan interjects—and he has been on the select committee—that they have been specifically excluded from that calculation. Another point that needs to be made is that a good bit of the money paid out for journey to work injury is ultimately recovered from other parties under the third party bodily injury insurance scheme. The other point I want to clarify (and I am glad to know that my memory is better than that of other members in the Chamber) when I said 'decades' I was actually right. It was certainly in the rewrite of the Workers Compensation Act of 1971, and the quick research I have done indicates that it was probably first introduced into our legislation in 1966, so that benefit has existed for some considerable time. That is just a matter of fact, which I put on the record. It first appears on 1 December 1966 and has been reaffirmed in legislation since then.

I know that members opposite argue that some artificial situations occur in the journey to work provisions, and that there are arguments which are adjudicated upon about when the journey actually starts. I suppose that, as with any area of the law, when we get to the limits of a particular definition as applied to the facts, there will be some situations that fall one way and others that fall another way. There has to be a delineation at some point. While some of those may seem a little artificial, I suspect that in the overall scheme of things they do not constitute a great cost to WorkCover, such as the example Mr Stefani gave of the person tripping over his dog in his front driveway. Obviously, however, journey accidents generally do add to WorkCover costs, but it is a benefit that has been in our law in this State since 1966, I repeat my recollection, is a provision that exists in most other States in Australia. The Hon. Mr Davis shakes his head; we will check and advise him by correspondence if we have not been able to check adequately before the Committee finishes its work.

The Hon. I. GILFILLAN: I should like to make it clear that we support the principle of journey cover. It is an area where anomalies can be highlighted, but basically the principle is that a person is taking a journey linked to his or her employment. On that basis, I support the principle and oppose the new clause.

The Hon. T.G. ROBERTS: I want to make sure that those reading *Hansard* do not see the trivial as being the main argument that is being put forward. Journey accidents have some elements that may be seen to be unfair by

Opposition members. Recently there was a major journey accident in the South-East when seven workers were killed in a bus supplied by the employer to take them to their work on an oil rig.

The Hon. K.T. Griffin interjecting:

The Hon. T.G. ROBERTS: It is one thing to raise the hairy dog issue, but we must look at the whole issue. The seriousness of the other issues associated with journey accidents need to be put on the record.

The Hon. L.H. DAVIS: I want to underline the point that 10 per cent of all WorkCover claims are journey accidents, which I think is an extraordinarily high figure. Another point that should be noted by the Committee is that the President of the Australian Medical Association, Mr Harding, and the Chairman of the South Australian Association of Surgeons, Mr Black, in a letter to me dated 21 April 1992 make specific reference to their associations' concern about journey accidents being included in WorkCover. They make the point that journey accidents are an area in which fraud is possible and over which the employer has no control. That point should be borne in mind by the Committee.

Paragraphs *(a)*, *(b)* and *(c)* negatived.

The CHAIRMAN: Does the Hon. Mr Davis wish to speak further to the second part?

The Hon. L.H. DAVIS: New clause 2a *(d)* is a separate issue. It relates to one of the most contentious issues in the Bill. Financially it is by far the most important matter that we shall be debating today. It concerns the effect of the recent judgment in the case of *WorkCover Corporation v James* in the matter of the two-year review. I indicate at the outset that if the Committee does not support this amendment, other consequential amendments which I have on file, notably to clause 6, will not be proceeded with.

A week ago the Full Court of the Supreme Court dismissed an appeal in the matter of James. It has had dramatic consequences for the WorkCover scheme. It has been said that the decision in James has cost WorkCover $120 million which cannot be recovered. Certainly it has an ongoing future difficulty. The main impact of the decision in the James case is to widen the factors to be considered in deciding whether employment is suitable and to require that suitable employment be available immediately before reducing benefits beyond two years. It is a very dramatic decision. As a result, the Liberal Party, recognising the financial consequences of the decision, has sought to introduce amendments to overcome the adverse effects of the James case decision.

The Full Court unanimously decided that factors other than the four factors referred to in section 35 (2) *(b)* of the Act can be considered when making an assessment of the prospects of a worker's obtaining employment. The court decided that the major additional factor to be considered is the state of the labour market. They point out that in the present climate there is little hope of disabled workers obtaining employment. In effect, we are saying that WorkCover is becoming a *de facto* unemployment scheme.

In section 35, subsections (1) and (2) *(a)* of the present legislation, we use phrases such as 'reasonable prospects of obtaining' and 'reasonably available to the worker'. This means that although a worker cannot move his location deliberately to minimise his chances of obtaining work, the actual prospects of obtaining work in the area in which he lives can and should be taken into account. His Honour, Acting Justice Zelling, in his decision on page 18, stated:

> He has no reasonable prospect of obtaining work if there are no jobs offering, whether due to a recession or any other cause. If the workman is prepared to work but there is no job for him, he remains on weekly compensation.

The court also stated that the work must be almost immediately available for such work to be taken into account under section 35. In other words, in future we will not be able to show maybe that work in the area will be available; it is the immediate period shortly after the assessment which is relevant according to the Full Court decision. In his judgment, on page 23, His Honour Justice Legoe said:

> It must be acknowledged that a reasonable prospect of obtaining suitable employment necessarily means in the future, and to give sense to subsections (1) and (2), it must mean in the immediate future.

His Honour Justice Mullighan, in the first instance, said:

> . . . suitable employment that a worker would almost immediately obtain if he applied for such employment.

That is a summary of the James case. To compound the problem we see that Acting Justice Zelling in his judgment, on page 19, went even further when he said:

> The employment must for the purposes of subsection (1) *(b)* (ii) be employment which the workman is certain to get and which starts in a few days time at the latest.

It seems that there must be an almost immediate prospect of work, and it will not be sufficient simply to produce a list of job vacancies. It will be necessary to get employers offering jobs and saying that they will employ in those jobs workers who have suffered a compensable injury. In the present climate of 11 per cent to 12 per cent unemployment in South Australia, that is obviously a very difficult, if not impossible, requirement. On the present interpretation of section 35, it would appear that virtually all two-year reviews will now be lost unless the employer actually offers work to the injured worker and the worker refuses to work. That is the challenge facing the Parliament. The legislative framework must react to the judgment of the Supreme Court.

Quite clearly, employer groups are concerned about the outcome of the second year review case and, in meeting with the Premier earlier this week, they were informed—presumably by the Premier—and state in their press release:

> The Government expected the second year review issue to be dealt with in this current session of Parliament.

I think that is a reasonable expectation. This is a serious matter which will create increasing liabilities if it is not attended to. In fact, the Chief Executive Officer of WorkCover has gone so far as to suggest that it will threaten the financial viability of the WorkCover scheme unless it is addressed. This is an ironic situation for the Government, because it turned its back on the recommendations of the select committee, which put in place amendments covering the second year review problem as it existed.

But the result in the James case was far worse than was contemplated by anyone—the Government and WorkCover, most certainly. Having ignored the second year review problem in the legislation now before us, the Government is forced to come to judgment and say, 'Do we act now, or do we continue to dillydally on what is the critical issue?' I am pleased to see that the Premier has given the three key employer groups assurances that:

> The Government expected the second year review issue to be dealt with in this current session of Parliament.

Presumably this session will end some time next week. I believe that is the priority which this issue should be given, because it is not merely a matter of threatening the financial viability of the fund if it is not addressed but it will also badly affect the perception of the fund in the community at large and amongst employer groups. If we do not address this issue when we debate the Bill today, and if we do not rectify the problem, WorkCover Corporation will face the major difficulty that on or after 30 June the actuary will look at the state of the WorkCover fund and will, of course, take into account the circumstances surrounding the fund

at the time. Undoubtedly he will have to take into account the implications of the decision in James, and it is certain that if on 30 June there has been no amendment to overcome the problem in James, the actuary's findings will inevitably have to be adverse.

Let us not put too fine a point on this: if we do not grasp the nettle today, we face the very real prospect of a blow out in the actuary's projections for what the levy rates are required to be to fully fund the scheme to something in the order of 3.9 to 4 per cent. There can be no doubt about that. I have taken advice on that matter, and I believe that to be the case. We are dealing with a major crisis in WorkCover. Parliament must then change the Act to make clear what, arguably, was its intention in the first place: that is, to limit the criteria to the four factors listed in section 35 (2) *(b)*, which provides:

> The following factors shall be considered and given such weight as may be fair and reasonable in making an assessment of the prospects of a worker to obtain employment—the nature and extent of the worker's disability; the worker's age, level of education and skills; the worker's experience in employment; and the worker's ability to adapt to employment other than the employment in which he or she was engaged at the time of the occurrence of the disability.

That is the challenge that we as a Parliament are faced with, and we must respond to that challenge. I have had amendments prepared which are partly encompassed in this proposal which we are now debating and also in subsequent amendments. I gave instructions to Parliamentary Counsel to review the James case, to take into account that it not only affected the second year review but it also impacted on other cases. Certainly, the Zelling judgment had the potential to impact on other areas in WorkCover, and Parliamentary Counsel has provided these amendments.

I have consulted with employer groups over the past few days and discussed the amendments with them. I have also discussed the amendments with senior lawyers specialising in WorkCover, and I want to say that, certainly, the exempt employers, who represent 35 per cent of the work force in South Australia, have examined these amendments at short notice and they support them.

Obviously there has been some discussion about this amongst all employer groups. They all believe that it is of paramount importance that the Parliament act speedily to restore what was arguably its original intention. The exempt employers believe that the decision in the James case clearly extends the WorkCover legislation way beyond a reasonable interpretation of workers rehabilitation and compensation, and that immediate action is required. So there it is. In our view, it is a matter which must be addressed. I am comforted to believe that the Premier has already told the employer groups that the Government intends to deal with it in this current session of Parliament, and I would hope that, with that assurance given by the Premier, the Committee will accept the amendments which are the subject of this motion.

The Hon. C.J. SUMNER: I understand the concerns expressed by the honourable member. However, they relate to the decision of a single judge, not on this point and not to the Full Court as a whole. I am not sure whether the issue will be argued before the Full Court at some time in the future, but I assume that it will be. However, the Government's position—

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: Just a minute. The issue of concern which this amendment addresses, namely, the definition of 'suitable employment' was raised only by Justice Zelling so, while the Full Court supported Mullighan's decision in relation to issues which he raised (and which we will deal with later), this particular amendment deals only with trying to overcome the potential problems outlined by Acting Justice Zelling.

In that sense, they do not actually represent the law of South Australia at this point in time. I imagine that it was not central to the Full Court's decision and that being the case, as I said, it is probable that the point will be argued at some point in time before the Full Court. However, at this stage this amendment has been raised only by one judge, Acting Justice Zelling, and WorkCover is not obliged to operate in accordance with it.

The Government's position is that he has raised issues. We acknowledge that. However, those issues are fairly complex. The Government believes that it needs further consideration. I assume that the joint select committee, which is still extant, will look at this issue. Certainly, the Government will look at it, but we do not believe that it should be dealt with at this time in this Bill.

The Hon. L.H. DAVIS: I made clear in my opening remarks that I am taking this amendment as a test case for the whole issue of second year review and the anticipated consequences of the Zelling judgment. The Attorney clearly recognises that. However, the Attorney has now told the Council that the Government wants more time. That is at odds with what the Premier told employer groups on 28 April—just two days ago. The Premier informed the employer groups that the Government expected the second year review issue to be dealt with in this current session of Parliament.

The Hon. C.J. Sumner: That is the Mullighan issue, not the Zelling issue.

The Hon. L.H. DAVIS: It is the second year review issue.

The Hon. C.J. Sumner: There are two parts to the second year review issue, as I understand it.

The Hon. L.H. DAVIS: I would then appreciate it if the Attorney could clarify the situation, because in our discussion on the motion we are talking about the second year review as well. As I said, I am taking this as a test case of the second year review to get an indication. The Attorney may well say, 'We will not support this amendment, but we will support your amendments to the second year review to take account of the James case decision.' Perhaps he should clarify that point and we can further the debate.

The Hon. I. GILFILLAN: I wait with bated breath to see whether the response from the Attorney will show that the Government has accepted the challenge to move this amendment to the Act, which will in fact safeguard blowouts of costs that may flow on from the Supreme Court James judgment. I am sure that the Committee will have noted that I have amendments on file dealing with the second-year review (section 35), mirroring those approved by the select committee. There is one rather interesting difference that I think ought to be dealt with at least briefly. I refer to the wording that the Hon. Legh Davis has proposed in his subclause (9), which provides:

> For the purpose of determining what employment is suitable for a partially incapacitated worker, the following factors (and no others) are to be considered:.

He then lists the factors. My amendment lists nearly identical factors, but it does not contain the words 'and no others'. The dilemma that has surfaced as a result of the Supreme Court judgment is that their honours in their wisdom have determined that, through there being no cut-off or some sort of restriction on the factors considered, those listed in the Act, and even those listed in my amendment, are not exclusive; therefore, the field is wide open. I think that strikes fear in the mind of Government members, as it does with anyone else who is concerned about a blowout in at least the actuarial calculations of the costs. This

is the chance for the Government to show its initiative in a constructive amendment to this legislation.

I have made my position plain: the select committee has not recommended these words. It may well have said that it did not have the Supreme Court judgment before it when it made recommendations for this Bill, and it is true; it did not. I cannot answer for what the committee would have recommended had it had the Supreme Court judgment before it, or what it will recommend in the future. All I know is what it recommended on its previous deliberations. I am also convinced that the Government is intelligent enough to know the consequences of the James judgment. It does require further thought and amendment to the Act to be doubly sure that the feared blow-out of costs is prevented.

So, I remind the Committee that I have amendments on file in relation to a later clause which deals with this very same matter (the section 35 second-year review). However, I point out that the Government, in its wisdom and intelligence, and with its proclaimed aim to keep the costs of WorkCover down, must address this question that has been raised by the Hon. Mr Davis and whether the words 'and no others' are valuable enough to be supported for inclusion in the Act.

The Hon. C.J. SUMNER: The issues raised by the Hon. Mr Davis at this point of the Committee stage of the Bill relate to the problems that could arise because of the Zelling judgment and his comments on what constitutes suitable employment. That was not so much a decision but view, not central to the decision, of a single judge. In his amendments the Hon. Mr Davis is trying to anticipate future problems; that is, that what Mr Justice Zelling said might become the law as determined by the High Court in relation to this matter. On this point the Government believes that further work needs to be done on this topic relating to the Zelling judgment and therefore opposes this amendment.

It is also true that the Government will oppose the other amendments relating to the second-year review which arose out of the select committee and which are based around the decision of Mullighan, confirmed by the Full Court in the decision of WorkCover Corporation and James. I am instructed that on this point we will examine the Zelling issue in the future because it raises issues, but it does not constitute the firm law of South Australia at this time.

However, this judgment and the other judgments in this case have complicated the whole issue relating to second year review. I am instructed that the Government at this stage will not support the recommendations of the select committee on that point, either. At the moment we have in front of us only the Hon. Mr Davis' attempts to overcome the potential problems of Justice Zelling's judgment. At this point, that is what we are concerned about, and on that point the Government will oppose the amendment.

The Hon. L.H. DAVIS: I accept the proposition that the Attorney has made, that this matter we are now debating relates to the Zelling judgment, which goes far beyond the other judgments. However, as I said, to facilitate Committee proceedings, it was reasonable to put this because it could well have been that, if this were accepted, the Government would also accept the wider proposition that had been put in the decision in the James case. By accepting the proposition of the Liberal Party, it would overcome the very real financial difficulty that results from the James decision.

What alarms me is that the Attorney-General has now admitted that the Government has no intention of amending clause 6 as proposed by the Liberal Party. In other words, the Government has no intention of fixing the massive problem that exists in the second year review. The Government has betrayed its promise to business of just two days ago. I am astounded at that. Let me just read again the media release from the employer groups, including Lindsay Thompson from the Chamber of Commerce and Industry, Peter Hampton from the South Australian Employers Federation, and Alan Swinstead from the Engineering Employers Association. This joint statement arose from the employer groups meeting with the Premier on WorkCover on 28 April 1992. It states:

> The Premier acknowledged the serious circumstances facing WorkCover, particularly in the light of the recent Supreme Court decision regarding second year reviews. The employer groups were informed that the Government expected the second year review issue to be dealt with in this current session of Parliament.

There is nothing unambiguous about that.

The Hon. C.J. Sumner: That is what we are doing now. We are dealing with it.

The Hon. L.H. DAVIS: You are dealing with it but you are not dealing with it. The Attorney is flippant about it. It is a matter of grave concern to all employer groups in South Australia. Premier Bannon has betrayed a promise he made to the three major employer groups in South Australia. He has broken his commitment to business in South Australia. The Government stands condemned as being anti-business. Let there be no doubt about that. The Liberal Party, with its meagre resources and in the short time from the decision in the James case on 15 April through to the present, in those 15 days has thrown all its energies and efforts into finding a solution to overcome a problem which threatens to wreck the financial viability of WorkCover and which threatens to blow out the premiums of employer groups in South Australia to perhaps 3.9 per cent or 4 per cent unless it is attended to.

This Government has already demonstrated its contempt for the plight of business by turning its back on the select committee's recommendation on the second year review, a recommendation supported by all members of that select committee, including the Minister of Labour (Mr Bob Gregory). In an act of remarkable schizophrenia, he managed to table the select committee's report in another place, with his signature underneath it supporting the second year review, and minutes later introduced a Government Bill which totally ignored the second year review. So, today we have the second leg of this anti-business quinella and anti-job program of the Government when it turns its back on the opportunity to fix the second year review. As I said, in 15 days the Liberal Party has managed to come up with a solution which we have prepared in consultation with Parliamentary Counsel. We instructed them to examine the broad decision in the James case, and the particular problems created by the Zelling judgment which took it beyond the two year process. We have checked it and double checked it with employer groups and legal people skilled in WorkCover.

What has this Government done in 15 days for the business people of South Australia? It has done nothing. Not only has it done nothing, but the Premier of South Australia, who is the Treasurer of South Australia and is supposed to stand up for business in South Australia, has broken a promise made two days ago to the employer groups. The employer groups make the point that they have been expressing concerns about WorkCover not just at present but they have been expressing these concerns for legislative reform for WorkCover for over two years. As they state in their concluding statement in the media release, it is now time for the Government to act in order to re-establish confidence in the business community and to assist South Australian industry to compete. If I was the Attorney, I would be ashamed to be part of that Government that has

so blatantly broken a promise. My question to the Attorney is: why has this promise been broken?

The Hon. C.J. SUMNER: I am not sure that it is clear that a promise has been broken. Obviously I am at some disadvantage in this matter because I do not have details of the Premier's conversations with the business groups to which the honourable member refers. I can only suggest that, when this matter reaches another place, as it seems inevitable that it will because I assume amendments will be passed in this place that will therefore need to be reconsidered in another place, the honourable member's colleague asks the Premier about the discussions that he had with the employer groups. The Premier can give his own version of the events. I expect that the Hon. Mr Davis would concede that I am hardly in a position to speak on behalf of the Premier in relation to those discussions at which I was not present.

The Hon. L.H. DAVIS: This is a serious matter, and I accept what the Attorney has said. He is hardly in a position to know what the Premier said. This Government is in disarray. In the interests of taking the opportunity of amending this legislation to correct the problem, to help employer groups and to reduce WorkCover levies to a rate that is at least comparable with other States, could I suggest to the Attorney that we report progress and that the Attorney consult with the Premier to see if we can resolve the matter? I do that in the best of goodwill, because all employer groups have an expectation that the matter will be resolved. It is an expectation that has been underlined in the promise made to them by the Premier. It is an expectation that I have certainly given to the employer groups on behalf of the Liberal Party over the past 15 days.

In the interests of decency and honesty, and in the interests of ensuring that we seize the moment and create a WorkCover scheme that is not the most outrageously expensive scheme in Australia, I suggest we report progress to enable the Attorney to consult with the Premier, and that we resume the Committee stage of this debate some time later today.

The Hon. I. GILFILLAN: I support the Hon. Legh Davis's call to the Attorney-General to consult with his colleagues on this amendment to section 35 and the second year review. We do not necessarily have to stop the rest of the work; we could carry on with other matters. Perhaps he would even have an opportunity to discuss the matter over the lunch break. The point I make is that the Government has been involved in this select committee. This Bill has emerged after months of work and, from what I understand from what the Attorney-General has said this morning, the Government actually intends to oppose one of the constructive and significant amendments that came through that select committee process, yet we all know that the Government wants that amendment passed.

If the Government does not want it passed, I suggest that it argue most strenuously that it is destructive, opposite to its point of view and at no stage should be considered, otherwise it is really continuing the seeds of discontent as if there is a war or confrontation between the forces of darkness and light. It is rubbish; it is a misrepresentation of the cooperation and work that has gone into that select committee, and we know it is a misrepresentation of the real feeling on the ground amongst the people in the Government who have dealt with this matter.

I certainly have no problem in stalling the actual final determination of this until the Attorney has had the opportunity to consult with his colleagues about it. I make my point plain; I have said before that I will persist with moving and supporting amendments that are in line with that select committee's recommendation, but I was stunned to hear that the Government will have the gall and hypocrisy to oppose even that. I find that a very treacherous position for a Government that desperately wants someone else to be up-front in taking the opprobrium for measures that it desperately wants implemented. I support the Hon. Legh Davis' suggestion and I suggest to the Attorney that he seek further consultation on this matter. We can either recommit it or deal with it later.

The Hon. C.J. SUMNER: I do not see what further consultation will achieve at this point. I am surprised that the Hon. Mr Gilfillan is stunned by the Government's attitude, because that attitude was outlined by the Minister responsible for the Bill, the Hon. Mr Gregory, during the debate in the House of Assembly. So, the Government's position has been on the public record for some time. The Hon. Mr Gilfillan says that we now have this Supreme Court judgment, and that is true. I am instructed that, because of the Supreme Court judgment, further work needs to be done on this issue, and that is the Government's position. I see no point in delaying this clause, because as I understand it the Hon. Mr Gilfillan has agreed with the Government to oppose the amendment of the Hon. Mr Davis in so far as it deals only with the question of the Zelling judgment. No doubt when we get to the other clause on the second year review the matter can be reconsidered at that point so that no-one is under any misapprehension.

I repeat that my instructions on behalf of the Government are to oppose the amendments of both the Hon. Mr Gilfillan and the Hon. Mr Davis in relation to the second year review, whether they relate to the Zelling judgment, which is the immediate matter before us, or whether they relate to the decision of the other judges in that case, and that of the original judge in the first instance, Justice Mullighan. I have little doubt that there will be further discussions about this issue and that they will inevitably occur at a conference of managers between the Houses. The Government has indicated its position; obviously, members opposite are not happy about it, but there will be an opportunity for further discussions at the conference of managers, and probably the sooner we get there the better.

The Hon. L.H. DAVIS: There is the Bannon Government exposed for all to see, absolutely naked of principle. Never mind what is in the best interests of the business community; it is in the hands of the trade unions. That is what the Attorney-General is effectively telling us. We do not have to read too deeply between the lines to know that the Bannon Government has been nobbled by the trade unions. They are the ones putting the spanner in the second year review works. While the Attorney-General is at his urbane best in trying to deal with this extraordinary situation, he has been so laid back he has been almost horizontal.

The Hon. C.J. Sumner: I thought you said 'urbane'.

The Hon. L.H. DAVIS: That's being laid back, isn't it? But his urbane style is masking a sickness that is gripping this Government. It is so weak, spineless and lacking in courage that it rolls over belly upwards for the trade unions. There is no doubt about that. It is an open secret in the Labor Party; we hear about it from people who are concerned on the other side about the dominance of the trade union movement.

The Hon. I. Gilfillan: This is not relevant.

The Hon. L.H. DAVIS: It is; I am putting this on the record.

The Hon. I. Gilfillan: This is pre-selection stuff.

The Hon. L.H. DAVIS: No, it is not. It is a fundamental matter.

The Hon. I. Gilfillan: We are debating the WorkCover Act.

The Hon. L.H. DAVIS: We certainly are debating the WorkCover Act, but we are affecting the position of the business community. The Premier went on the record saying, 'We will fix this for you' two days ago: what happened on the way to Parliament House? I think there is a pretty good answer to that, because I had my amendments in place, being distributed to and worked through by employer groups on 28 April, when Premier Bannon had met with the employer groups. Certainly, the Government with all its massive resources and 15 people backing each Minister, compared with my one-third of a secretary, has the resources to do far more than I can do, so surely the Premier knew on 28 April whether or not it was a goer. I knew it was a goer; I was telling my colleagues that we would do something to fix the second year review. In fact, I was saying to the media on 28 April that we would fix the second year review, so it is a very relevant point to make that a funny thing happened on the way to Parliament House.

The other point I think worth remembering is that two weeks ago my colleague, the Hon. Julian Stefani asked a question only about the trade union pressure applying in WorkCover in respect of the second year review. The information that he got was obviously well sourced and well justified, and we have had that confirmed today in the decision of the Government to break a promise made just two days ago.

The Hon. C.J. SUMNER: The Hon. Mr Davis asserts that the Government is breaking a promise made by the Prem. He can make that assertion if he wishes, but I will not concede that that is the case, and I think it is unreasonable for him to make that assertion without knowing the Premier's version of the discussions that he had with the employer groups.

I shall not go into it any further because I do not know. I was not present at the discussions. I do not know whether that press release accurately reflects the discussions that the Premier had with the employer groups. As I said, members will have to deal with that matter directly with the Premier, and there will be an opportunity presumably to do that when it goes to another place. I cannot accede to the assertion by the Hon. Mr Davis that there has been a broken promise—a promise made only two days ago—when clearly the matter rests between the Premier and the employer groups. It is a matter to which the Premier would have to respond.

Paragraph *(d)* negatived; new clause negatived.

Clause 3—'Average weekly earnings.'

The Hon. L.H. DAVIS: I move:

Page 1, lines 21 and 22—Leave out all words in these lines after 'amended by' in line 21 and substitute 'striking out paragraph *(a)* of subsection (8) and substituting the following paragraph:

(a) any component of the worker's earnings attibutable to overtime will be disregarded;'.

This amendment relates to overtime. The Liberal Party has been concerned in the WorkCover select committee about some of the areas which add to levy costs. Statistics from the Overtime Review Project of mid 1991, conducted by WorkCover, show that about 7 per cent of time lost claims had some overtime in their income maintenance payments. This would have been reduced to about .5 per cent had all the WorkCover reductions been upheld.

The effect of deleting overtime from the component of a worker's earnings is not a large amount, but we believe that it should be pursued in the iterests of making our scheme more competitive with other States. Exempt employers and other employer groups have made representations to the Liberal Party saying it is an anomaly for overtime to be included in weekly payments of compensation, and despite changes made to address this problem, review officers continue to provide for payments of overtime to be included. The exempt employers, therefore, believe that the solution is to exclude overtime for the purpose of calculating average weekly earnings.

The Hon. C.J. SUMNER: The intention of the Act was to provide as weekly payments what a worker could reasonably be expected to have earned had the worker not been injured. This amendment would remove the possibility that overtime may be included in weekly payments. Obviously, the amendment would disadvantage workers whose overtime clearly formed part of their expected weekly income. Therefore, the Government opposes the amendment.

Amendment negatived; clause passed.

New clause 3a—'Rehabilitation programs.'

The Hon. L.H. DAVIS: I move:

Page 1, after line 24—Insert new clause as follows:

3a. Section 26 of the principal Act is amended:

(a) by striking out subsection (1) and substituting the following subsection:

(1) Rehabilitation programs with the object of ensuring that workers suffering from compensable disabilities—

(a) achieve the best practicable levels of physical and mental recovery;

and

(b) are, where possible, restored to the workforce and the community,

must be established or approved by the Corporation, and may be established by an employer.;

(b) by striking out from subsection (2) 'by the Corporation';

(c) by inserting 'or an employer' in subsection (3) after 'the Corporation';

and

(d) by inserting 'or an employer' in subsection (4) after 'The Corporation'.

This new clause seeks to enhance the role of employers in rehabilitation programs. We recognise that an important aspect of workers compensation is a satisfactory and efficient rehabilitation program. The new clause gives employers the ability to be responsible for the preparation and management of a rehabilitation program with the assistance of the corporation.

The Hon. C.J. SUMNER: The cooperation and commitment of both employers and workers is essential to the success of rehabilitation. Employers and workers must be partners in the process. Presently employers are required by WorkCover to be a joint signatory to an injured worker's rehabilitation program. This new clause would enable an employer to establish a rehabilitation program. If the worker subsequently failed to comply with that program, the worker's payments may be suspended. This provision could be used in a very harsh and uncompromising way by employers against injured workers. The new clause is unnecessary and is opposed by the Government.

New clause negatived.

Clause 4—'Compensation of disabilities.'

The Hon. L.H. DAVIS: I move:

Page 2, line 3—Leave out 'contributed to' and substitute 'was a substantial cause of'.

This amendment relates to stress.

The Hon. C.J. Sumner interjecting:

The Hon. L.H. DAVIS: With the indulgence of the Chair, it might be appropriate to discuss this now. It is arguable that there might be differing votes in differing areas here given that some of the recommendations put forward by the Liberal Party are in some ways similar to what has been proposed by the select committee.

The select committee examined stress in some detail. We took advice from experts on medicine and psychology.

Indeed, we had representations from people who were on the Workers Compensation Board in New South Wales. Clearly it has become a major problem, particularly in the public sector. Stress claims in the public sector were running at three and a half times the level of those amongst WorkCover employees. Stress claims, even though they account for only 5.9 per cent of claims, represent about 30 per cent of the total cost of workers compensation in the public sector. That means that stress claims in the South Australian public sector represent $12 million annually. Some extraordinary figures are available. For instance, one in 16 employees in the Correctional Services Department filed stress claims sometime during 1990-91.

The problem with stress claims is that the legislation is so loose that a truck, a horse, a Melbourne express and a Boeing can fly simultaneously through the legislative gap, and I think the problem was recognised by all members of the select committee as being one which had to be addressed. The difficulty revealed in several Supreme Court judgments was that employees did not necessarily have to show that their stress was attributable to their workplace.

A series of cases have highlighted the defect in the current legislation. At present the Act states that a disability is deemed to arise out of the employment if, *inter alia*, '... the disability arises in the course of the employment and the employment contributed to the disability'. The disability is defined to include a disease which, in turn, includes any mental ailment, disorder, defect or morbid condition.

As I mentioned in my second reading contribution, Rubbert's case was an example where the Supreme Court judges were uneasy about the fact that, although the employer had acted reasonably in every respect in imposing a disciplinary measure on a worker, and even though the worker's reaction was unreasonable, he was able to succeed in a stress claim, given that the definition as it now stands is so wide.

Therefore, the select committee proposed that the stress arising out of the employment be a substantial cause of the disability. That was seen to be a more realistic approach than the Government's requirement that stress arising out of employment merely contributed to the disability. Therefore, the definition has been tightened, and the Liberal Party amendment seeks to ensure that stress is a substantial cause of the disability. There has been an argument as to whether the word 'substantial' provides a tighter definition than the word 'predominant', but the Liberal Party has taken advice and believes that the word 'substantial' is sufficiently tight, because not only must an employee seeking to establish a stress claim have to show that the employment was a substantial cause of the disability, but also there has been a significant strenthening of the second test. The second test is set down in the Bill. For the most part, the Liberal Party accepts the second test, which is:

> The stress did not arise wholly or predominantly from reasonable action taken in a reasonable manner by the employer to transfer, demote, discipline, counsel, retrench or dismiss the worker;

We suggest that the words 'in a reasonable manner' should be deleted because that could well become a red herring. People could argue, 'Well, you did everything else but it was in an unreasonable manner,' and I think that could be a red herring and would widen the test and create other problems. I like to think that the Australian Democrats will view that amendment favourably. Similarly, we have suggested leaving out the words 'in a reasonable manner' in the third test, which is:

> Reasonable administrative action taken in a reasonable manner by the employer in connection with the worker's employment.

We believe that the words 'in a reasonable manner' do not add anything to the argument. A further test, which we accept, is as follows:

> A decision of the employer based on reasonable grounds not to award or to provide a promotion, transfer or benefit in connection with employment to the worker.

The fourth leg, which we will seek to add as an amendment, is industrial action. I think that is an important test. I like to think that, given the length of the debate in the select committee and the general understanding we have of the importance of correcting the weakness of the current definition, the Committee can quickly resolve to support this set of amendments.

The Hon. C.J. SUMNER: The Government opposes the amendments moved by the honourable member, and it also opposes those placed on file by the Hon. Mr Gilfillan. The Government has made significant moves in its Bill, which is before the Committee, to tighten up on stress claims, and it believes that that adequately deals with the issue.

The Hon. I. GILFILLAN: I move:

> Page 2, line 3—Leave out 'contributed to' and substitute 'was a substantial cause of'.

I intend to stick strictly to the substance of the select committee Bill so that, although there may be argument in favour of a couple of minor word changes which the Hon. Legh Davis has moved, I do not intend to vary from it. It is up to the Government to indicate its opinion, as substantial contributors to the select committee work, as am I and as are Liberal members. Apparently it is not prepared to support the recommendations from the select committee, and this particular measure was worked out thoughtfully to try to prevent workers compensation covering the cost of a stress-caused condition, marginally attributable to the work situation.

I do not think that anyone to whom I have spoken including the people from the UTLC—has argued that it does not matter how small the contribution to stress may have been in the workplace and that, even if it is identifiable in a minuscule way, it must then be fully compensable. That is a nonsense which this legislation should attempt to make quite plain will not apply. The discussion should be about the appropriate wording to identify when a stress-caused condition is to be regarded as compensable. Once it comes in, it is taken in totally; it is not marginalised so that compensation is in proportion only to the amount allegedly caused by the workplace. It is totally compensable.

That is eminently reasonable and supported by anyone who is viewing the matter constructively that a word which says that the amount of stress caused from the work place must be appreciable—it must be of some significance. Some words were bandied about, and the Hon. Mr Davis mentioned some. I rejected the word 'predominant' because I felt that it would require too large a proportion before it became a compensable condition. However, the word 'substantial' in dictionary terms and in common usage is reasonable. It means that the vast majority of those people who have justifiably compensable stress caused conditions will be covered.

Once again, it amazes me that the Government is carrying this pusillanimous attitude of wanting one thing behind closed doors but publicly presenting a facade that denies the reality. I have moved my amendment to leave out the words 'contributed to' and substitute 'was a substantial cause of'. I will not support the other amendments outlined by the Hon. Legh Davis. In its deliberations, the select committee was fairly widely and firmly of the view that industrial action would not be covered. I understand that the Hon. Mr Davis is moving the amendment to make it absolutely crystal clear. I do not believe that the amendment is necessary. However, the understanding of the select committee was that injury or stress caused by industrial action would not be covered by workers compensation.

The Hon. R.J. RITSON: I support the amendment moved by the Hon. Mr Davis, and I want to make some remarks about so-called stress. I particularly support the contribution that ought to come from the workplace before a matter becomes compensable. It is a fact that most illness which is stress induced and which disables people and prevents them from working has its root cause elsewhere. Its root cause is other than the final triggering factor or the factor that causes it to present as an illness. The most common factors for such illness are significant losses in a person's private life—loss of a loved one, loss of a marriage, loss of physical health, loss of a child and loss of an embryo after miscarriage.

This Bill recognises that stress itself is not a disease and should not be compensable, but that identifiable illness caused by stress—whether that has a physical or mental manifestation—ought to be compensable in certain circumstances. However, it still leaves the legislation open to provide for compensation for naturally occurring illnesses which have nothing to do with the work place. That certainly would be so if the Bill were to pass in its present form.

It is essential further to identify the classes of mental illness—which are usually depressive illnesses—which may present at the work place in the form of a person no longer being able to cope, but which have their root causes in the factors that I mentioned in relation to a series of losses that can give rise to these illnesses. Whilst the Bill certainly seeks to define out of the equation the reasonable stresses of discipline in the workplace, it does nothing to provide for a proper medical inquiry and report to ensure that it is not compensating for someone's divorce, miscarriage or something like that.

I just make the observation that the word 'stress' should never be acceptable on a medical certificate in these matters. The diagnosis should be clearly stated. It should be a diagnosis of depressive illness, an anxiety state or psychosematic reaction, a perforated ulcer, or whatever. True diagnoses are easily stated and classified. Stress is not: stress is a very vague word, most commonly used by people who are not medically qualified.

I am pleased to see that the Government is restricting compensation to actual illness. However, unless the Hon. Mr Davis's amendment is passed, WorkCover will go on compensating people who have naturally induced illness of one form or another which has little to do with the workplace, which would have occurred anyway and which presents—that is, it comes to people's notice—because of an incident at work.

I believe that the Hon. Mr Gilfillan was arguing the same point. I think we are witnessing a common phenomenon in the Committee stage of Bills. When the Democrats and the Liberals agree, the Democrats find a slightly different wording in order to hijack the amendment.

The Hon. I. Gilfillan: It is exactly the same wording as that in the Hon. Mr Davis's amendment, so you are wrong.

The Hon. R.J. RITSON: The Democrat has not hijacked the amendment by doing any work; he is just hijacking it bald. Both are right in principle, and I hope the Government will accept an amendment that will truly restrict compensation to reactions to events in the workplace. After all, the Attorney as a lawyer will appreciate the legal concept of nervous shock, which in medical terms is probably most commonly an emotionally traumatic reaction to a sometimes physically traumatic event. There are classes of worker who quite clearly will be subjected to such events as may give rise to what the Attorney would understand as nervous shock and consequent illness. I refer to emergency workers, fire persons, police officers, ambulance officers, medical practitioners and others who are subject to physical accident of a severe type.

Whilst not denying that group of people just compensation, unless this change is made WorkCover will be paying for a large amount of naturally occurring illness which was just precipitated and noticed because of a work event. I support Mr Davis' amendment. If that is lost, I will support Mr Gilfillan's.

Amendment carried.

The Hon. L.H. DAVIS: I move:

Page 2, line 6—leave out 'in a reasonable manner'.

The Hon. C.J. SUMNER: Opposed.

The Hon. I. GILFILLAN: Opposed.

Amendment negatived; clause as amended passed.

Progress reported; Committee to sit again.

[Sitting suspended from 1.4 to 2.15 p.m.]

POLICE COMPLAINTS AUTHORITY

The PRESIDENT laid on the table the fifth and sixth annual reports of the Police Complaints Authority.

PAPER TABLED

The following paper was laid on the table:

By the Minister for Local Government Relations (Hon. Anne Levy)—

Review of the Local Government Finance Authority—Report, Summary of Recommendations of the report on the review of the Local Government Finance Authority,

The PRESIDENT: Before we proceed any further, I acknowledge the presence in the gallery of Christine Milne, from the Tasmanian Parliament, and I welcome her.

QUESTIONS

CORRECTIONAL SERVICES OFFICERS

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Minister representing the Minister of Correctional Services a question on the subject of officers with stress.

Leave granted.

The Hon. R.I. LUCAS: I have been contacted by a constituent who has voiced a number of concerns about the personnel management practices of the Department of Correctional Services. This constituent has identified in particular one female prison officer with the department who went on stress leave in late 1990, yet who at the same time was being employed on a full-time basis as a security guard with a large metropolitan security firm. He wonders how a person can go out on a stress claim with the department and at the same time have a full-time position with a security firm, employment that by its very nature attracts a certain degree of stress. This constituent has also expressed concern at the number of departmental staff holding part-time jobs with security firms whilst continuing to hold full-time positions with the department.

The Auditor-General's Report in 1991 highlighted again the need for the department to review its management of sick leave absenteeism. This issue was raised with the department as far back as 1981, and in the thirty-ninth report of the Public Accounts Committee in 1985, which

contained recommendations designed to help the department address the 'relatively high incidence of sick leave and associated call-back and overtime'. The Chairman of the Government Management Board also made additional comments regarding sick leave in November 1988.

Despite the department's implementing several measures aimed at combating absenteeism the Auditor-General noted that, to the end of 1990, sick leave, call-back and overtime remained at levels that had caused the Public Accounts Committee concern back in 1985.

At the same time last year's Auditor-General's Report identified that the number of stress claims within the department had risen by 300 per cent in the period 1988 to 1991. During the same period the number of accident claims by the department for 'overexertion' also rose some 183 per cent. It is interesting to speculate on whether some of these claims for workers compensation, given as stress or overexertion induced, were lodged by staff deriving their income source solely from the department, or from both the department and outside sources. My questions to the Minister are:

1. How many correctional services officers have been given departmental authorisation this financial year to obtain a second job, outside the department, while still in the employ of the Department of Correctional Services?

2. What were the corresponding approvals allowed in the financial years ending 30 June 1991, 1990, 1989 and 1988?

3. When authorisation is given for officers to obtain a second job, is adequate consideration given to the department's already identified high rate of absenteeism and rising stress claims since 1988, which have been identified in Auditor-General Reports?

4. Will the Minister investigate the case of the particular officer on stress leave that I have mentioned (and I indicate I will be prepared to provide, confidentially to the Minister the name of that officer. I do not intend to name the officer publicly) and indicate what action was taken by the department and WorkCover in this case?

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

POLICE VIDEO SURVEILLANCE

The Hon. K.T. GRIFFIN: I seek leave to make a brief explanation before asking the Attorney-General a question about police video surveillance.

Leave granted.

The Hon. K.T. GRIFFIN: Yesterday's *Advertiser* carried a story that police are considering a video surveillance system installed in cars. Apparently the system can be used from the police car to record events such as car chases, traffic breaches and arrests as well as recording on-the-spot interviews with civilians using a remote control microphone. Mr Peter Flynn of the Council for Civil Liberties has criticised the proposal on the basis that general surveillance of the population can constitute a breach of civil liberties. There is the potential for that with the installation of these systems. Such a proposal can have some advantages for police to record events so that there can be less dispute about them later, but there are important issues of civil liberties involved particularly in an interview situation where no warnings or the usual cautions have been given.

Has the Attorney-General or his officers given any consideration to the civil liberties issues related to the use of video cameras from police cars? If so, what is the result of that consideration? If not, is it an issue that the Attorney-General will have considered in the light of the possible installation of these systems in police cars?

The Hon. C.J. SUMNER: I have not given any consideration to it personally. I do not think officers in the department have, but they may have. I will check. Now that the honourable member has posed the question, I will examine it.

MARINE AND HARBORS DEPARTMENT

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Attorney-General, representing the Premier and Treasurer, a question about receipts from the Department of Marine and Harbors.

Leave granted.

The Hon. DIANA LAIDLAW: The document outlining the estimates of receipts for 1991-92 notes, under the heading of receipts from State undertakings, that Treasury expects to receive $1.85 million from the Department of Marine and Harbors this year. This is a new source of income to Treasury, with not one dollar noted as the estimated or actual receipts from the department in 1990-91. My questions relating to the estimated receipts arise from evidence before the State Bank Royal Commission on 17 April that the bank undertook 'a profit enhancement' program to ensure that reported results met Treasury expectations of dividends. I ask the Premier and Treasurer:

1. On what basis did Treasury calculate that the Department of Marine and Harbors would return $1.85 million to Treasury this financial year?

2. Was the figure reached after consultations with the Department of Marine and Harbors and did the department agree that the figure was a fair and reasonable projection of its financial forecasts for the year?

3. As imports through the Port of Adelaide are down 17 per cent on the target set by the department for the first three-quarters of the year, does the Treasurer anticipate the department will be able to meet Treasury expectations of $1.85 million in receipts this year?

4. Will Treasury be requiring the department to pay $1.85 million even if the department does not meet its financial targets for the year?

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

WHITE CLIFFS EXPLOSIVES RANGE

The Hon. I. GILFILLAN: I seek leave to make brief explanation before asking the Attorney-General, representing the Minister of Emergency Services, a question about the ERT firing range at White Cliffs.

Leave granted.

The Hon. I. GILFILLAN: On Monday 17 February this year a bushfire swept through the old firing range at White Cliffs near Crystal Brook, which is now run by the ERT explosives manufacturing company. At the time, a range of emergency service units were called into action in the area, including units of the CFS, the MFS, police and St John.

CFS units from Gladstone and Booleroo Centre entered the range to put out hot spots after holes were cut in the north-west perimeter fence to allow a bulldozer to cut firebreaks. Information provided to me by a member of the CFS involved in fighting the fire has raised a number of questions about safety issues, questions that so far have not been addressed by officials or the Government. None of the CFS volunteers entering the area were briefed about the

dangers that existed on site from thousands of rounds of unexploded mortar shells and other forms of ordnance, including ageing deposits of nerve gas and other allegedly toxic waste material.

I raised this issue earlier this month in which I cited one particular incident of a bulldozer used to cut firebreaks, having scraped up an unexploded bomb which it crushed but, fortunately for the driver, it did not explode. CFS members have told me that two weeks after the fire was over they attended a debriefing at Gladstone Hall, which was also attended by emergency service chiefs and officials of the ERT company. This was the first time that CFS volunteers knew of the dangers the site posed, and in many instances their lives had been in greater danger from unexploded ordnance than from the fire. One CFS volunteer told me that if he had known there was a chance that he could have had his legs blown off, he would have refused to enter the firing range, a view apparently shared by a number of his fellow volunteers.

At the debriefing some members expressed concern, astonishment and outrage that they had not been properly informed of the dangers beneath the surface of the fire area and, in their words, were laughed at by emergency service officials. One CFS member asked that a full report be made by service chiefs to the Minister but was told that would not be done. As a result, a growing number of CFS members in the area say that next time a fire breaks out in the firing range they will refuse to go into the area. My questions to the Minister are:

1. Given the extraordinary dangers that obviously exist in the firing range, why were firefighters not informed of those dangers prior to entering the site?

2. Who carried the responsibility for ensuring that all possible safety measures were taken on behalf of volunteers during this particular fire?

3. Can the Minister guarantee that, in all future emergency service operations in potentially dangerous and hazardous areas, all personnel are properly briefed on the dangers they face prior to undertaking operations?

4. Has the Minister received a full report on all aspects of the fire from emergency service chiefs and, if not, will he undertake to ensure that a report is made and that it is available for public scrutiny?

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

ERT EXPLOSIVES AUSTRALIA

The Hon. C.J. SUMNER: I take the opportunity to respond to a question asked by the Hon. Mr Gilfillan on 31 March in relation to ERT Explosives Australia Pty Ltd, which I referred to the Minister of Labour and to which I now have a reply. I seek leave to have that reply inserted in *Hansard* without my reading it.

Leave granted.

1. The site is fully fenced with a commercial standard security fence and has two entrance gates (kept closed) in series to prevent ready access to the factory site and is in a reasonably remote rural setting. The presence of items left by the army is well known by the management of ERT Australia. No employee or contractor is allowed to undertake work in an area until every effort is made to ensure that the site is safe and all work is undertaken under the supervision of ERT staff. Management at the Gladstone site have examined the area and confirmed no-go areas in conjunction with a map of the areas produced by the army. No factory development work is undertaken in contaminated areas and, given the size of the site, plant staff have no reason to visit the contaminated scrub areas. ERT liaise closely with the CFS and have reached agreement in relation to access to the contaminated portions of that site. No CFS member is allowed to enter the scrub in the contaminated area and during bushfires a senior ERT staff member attends the fire site with the CFS.

2. The testing area is a small part of the total land operated by ERT and is subject to fire ban requirements similar to all other activities which may cause a fire. The management of ERT liaise with the local CFS and obtain the correct permits before conducting tests or burning off in summer. Earlier this year the Gladstone Disaster Planning Committee met at the ERT site and inspected the area. The membership of this committee includes police, CFS, Red Cross, St John and the local hospital. In many respects the ERT site at Gladstone is ideal for the current purpose, just as it was for its original use as an ordnance base. The small rounded hilly terrain provides natural shielding between hazardous activities to ensure that any hazardous situation which may occur remains isolated. The disadvantages of the area tend to be financial due to the cost of providing power, water and vehicle access to such a large site. One of the major mechanisms which can cause a hazardous situation during the manufacture and storage of explosives is a fire involving the product, and the potential for a bushfire is well recognised and planned for in terms of firebreaks and firefighting. In the unlikely event that a fire involves the explosives, evacuation of the area is required and if an explosion occurs it will be a localised effect only.

3. Under the Explosives Act there are strict regulations relating to a factory for the manufacture of explosives. Part of these regulations deal with the separation between buildings in which hazardous activities are undertaken, and the separation of other activities from such buildings. The explosives testing area is a small part of a large site operated by ERT Explosives Australia Pty Ltd and is separated from other activities, particularly the manufacture of explosives. Furthermore the Explosives Act and regulations incorporate separation requirements for the manufacture and storage of explosives to dwellings, other business activities and areas where the public may assemble. Land use planning and the allocation of zoning to control land development is undertaken by the local government agency responsible for the area. The site is surrounded by farming land and there is no indication that commercial development is planned adjacent to ERT's boundary. If development, either residential or commercial, were to be placed adjacent to the explosives factory then some minor changes to ERT's work system would be needed but such development generally would not endanger the continued operation of ERT due to the safety distances currently in place as required under the Explosives Act.

4. Within the legislation administered by the Department of Labour, 'toxic' means a class 6 dangerous susbstance which has poisonous/toxic properties and the current manufacturing process at ERT does not use such chemicals. However, some of the ingredients may be considered to have the potential to be environmentally undesirable if released in large quantities. The waste arising from the manufacture of explosives falls into three categories:

1. Packaging material arising from the ingredients. This material is disposed of as described in the explanation to the question, namely by burning.

2. Explosives product arising from quality control samples and small amounts of product arising from start up, close down and adjustments during manufacture, and occasional cartridges of product form the packaging machine arising from, say, incorrect length, defective printing, or poor sealing. ERT recycles virtually all waste explosives product which may arise during manufacture because it is inefficient and costly to sacrifice the material when it is quite easy to incorporate it into the next day's production. What little explosive is required to be destroyed, for example, contaminated cartridge wrappers arising after reprocessing of the ingredients, is destroyed by burning under strictly controlled conditions.

3. Wash water arising from clean-up at the end of each run. ERT controls its use of wash water to keep it to a minimum and have arrangements to collect and treat this water.

Within the above arrangements, waste from the manufacture of explosives is controlled by the company and accordingly it is not believed that toxic waste is being washed into the nearby creek. The Minister of Labour has requested that the arrangements for waste control be reviewed and officers from the Department of Labour and the South Australian Waste Management Commission will attend the site later this month to confirm ERT's arrangements.

MEMBERS' REGISTER OF INTERESTS

The Hon. CAROLYN PICKLES: I seek leave to make a brief statement before directing a question to the Attorney-

General on the subject of the register of interests of members of Parliament.

Leave granted.

The Hon. CAROLYN PICKLES: A recent perusal of the register of interests of members indicates that there is a great deal of variation in the way in which members have recorded their financial affairs and those of family members as required under the Act. Some members set out in detail the actual shareholdings in companies which they or their family members hold, which I am sure was the original intention of the Act. However, others merely indicate the names of family trusts, with no indication of the shareholdings held by those trusts. Obviously this is not a full declaration of the interests of a member, as no search or check could be made by an interested member of the public of any possible conflict of interest of particular members of Parliament.

This is a matter of interest to the public. Members of Parliament hold public office and from time to time they serve on committees where they could have a conflict of interest. At present there is no way to check any potential conflict, and there should be. Has the Government given consideration to overhauling the Act so that the recording of information is required to be in a more standardised form and that shareholdings in family trusts are itemised?

The Hon. C.J. SUMNER: I think the current situation is unsatisfactory and should be dealt with. Obviously it is not a situation where full disclosure is made when family trusts are used to hide the real nature of the holdings of a member.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: They may not be deliberately hiding something, but as a result of the utilisation of a family trust they may, in fact, be disguising the true extent of their interests. When this Bill was before Parliament in 1983, as I recollect it, there was considerable opposition to it from some, but not all, members of the Liberal Party. My recollection is that the Hon. Mr Lucas was one member who crossed the floor to vote with Labor members to—

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: No, to support it. You crossed the floor to vote with Labor members to support the introduction of the pecuniary interests legislation. Nevertheless, there was a number of Liberal members in this Council and in the House of Assembly who vehemently opposed the introduction of the pecuniary interests legislation. Members will recall that there was some dispute subsequently—

The Hon. Diana Laidlaw interjecting:

The Hon. C.J. SUMNER: Debts are noted.

The Hon. Diana Laidlaw interjecting:

The Hon. C.J. SUMNER: Well, that is very good. I said 'some members of the Liberal Party', and I am sorry that I overlooked the Hon. Ms Laidlaw. However, some Liberal members supported the Labor Party in the introduction of this legislation. I acknowledge that, in addition to the Hon. Mr Lucas, the Hon. Ms Laidlaw also supported it. However, there were a number of others who vehemently opposed it.

Members will recall the dispute that arose after the passage of the legislation when the member for Coles—Mrs Adamson, as she then was, and now Ms Cashmore—said that she could not disclose the interests of her husband under the legislation that had been passed. At that time it was made clear that a member's obligation was to disclose on the register of interests those interests of their spouse that were known to them. In the final analysis, Mrs Adamson—or Ms Cashmore as she is now known—did disclose in the register those interests of her husband of which she was aware.

Since then, of course, there have been other criticisms of the legislation; in particular, the current Leader of the Opposition said he would not disclose his interests to anyone in the Parliament and as far as he was concerned he would be prepared to cop a fine if he did not do so.

An honourable member interjecting:

The Hon. C.J. SUMNER: As I understand it, there has not been a complaint that he has not disclosed his interests. I assume that he eventually saw that what he was suggesting was untenable and that he complied with the legislation. An interjection has been made that he dealt with the matter by setting up a family trust. I do not know whether that is true; I have not perused the register in that respect. Nevertheless, it is true that as recently as when Mr Baker was elected to Parliament he was very criticial of the pecuniary interests legislation.

So, the point I am making is that the legislation, when it was before the Parliament on the first occasion, was the subject of considerable controversy. Legislation on this topic, which was introduced by the Labor Government prior to 1979, was thrown out totally and unceremoniously by the Liberal Party.

The Hon. Carolyn Pickles: I wonder why.

The Hon. C.J. SUMNER: The Hon. Ms Pickles interjects saying, 'I wonder why.' I will not enter into discussion about why that might be the case. I am merely stating the facts; namely, that the legislation that was introduced before 1979 was thrown out by the Liberal Party in this place. It was opposed in 1983 by a large number of Liberal members in this place and another place. Of course, the legislation, when it did come through, was an attempt adequately to put on the public record the pecuniary interests of members of Parliament so that members of the public and other members of Parliament could check what interests members had.

That legislation has been in place now for some time. I am not sure of the extent to which family trusts have been used to disguise the extent of the holdings that members have, but there is no doubt that some family trusts are listed in the register, and those family trusts may involve the holding of shares in companies which are thereby not revealed to the Parliament through the register. So, my answer to the question is that I think there are some aspects of this legislation which are unsatisfactory and which do need reviewing. Certainly, I intend to do that.

PARKING OFFENCES

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

Leave granted.

The Hon. J.C. IRWIN: On a number of occasions during this session I have asked questions relating to parking. Following the debate to disallow the parking regulations last year, the Local Government Services Bureau held talks with a number of people, and the Local Government Association held a seminar of metropolitan council officers, all in an effort to improve the understanding and administration of the parking regulations gazetted in August 1991.

I am not sure if any real or lasting progress has been made so far as administration is concerned and for the protection of the users of parking spaces. At least in some areas the progress is questionable, for I am still receiving advice that nothing much has changed. Parking tickets are still being issued in the City of Adelaide for expired meters and/or exceeding time limits although no offence may have been committed. Legal opinion is that in operating the

meters without marked spaces and issuing offence notices for expired meters or exceeding time limits, where the time limits are only shown on the meters, the council is unlawfully inviting payment of the meter fee or expiation fee.

On 8 April this year a vehicle was left in Franklin Street between Post Office Place and Bentham Street where the spaces had been removed but the meters remained operating. At 9.11 a.m. a notice 601-709-67 was issued for an expired meter and the owner removed the notice at about 9.30 a.m. At 12 noon he returned to find another notice for 'further offence' issued at 11.30 a.m. The owner found that signs had been erected for the area indicating half hour free parking. He was told the signs were erected at about 11 a.m.—in fact while his car was parked and accumulating parking tickets. Further, the lines were not marked in this space until 14 April 1992. The new signs are inscribed with the number 9104120. This is the number of an area declared on 22 April 1991 (*Gazette* of 2 May 1991, page 1460).

The area in question, although gazetted, was not in accord with the now repealed regulations. This declaration has clearly lapsed as the area was not denoted on 5 August 1991 and requires redeclaration by the council. I am advised that the Adelaide City Council has not passed the required resolutions, that it may have unlawfully removed signs and parking meters, erected signs and installed ticket machines associated with areas not declared and marked before 5 August 1991 or, indeed, since 5 August 1991. I ask the Minister: in the light of the distinct possibility that the Adelaide City Council and other councils may still be illegally receiving revenue from cars parked by people who do have an expectation that the fines they pay are legally correct, will the Minister seek advice from the Local Government Services Bureau that the examples I have given previously and today will be investigated with Mr Gordon Howie to ensure that the Adelaide City Council and other councils are properly complying with the Local Government Act and the regulations thereunder?

The Hon. ANNE LEVY: Long before the honourable member mentioned the name of Mr Gordon Howie, I, and I am sure many members in this Chamber, suspected that he had been having a conversation with the honourable member. I certainly would not pretend to be able to answer the detailed matters that were raised, including dates of gazettal, pages of gazettal, numbers of motions or regulations—which are a mystery to most people and of very little concern to them.

What they are obviously concerned about is whether they have overstayed the parking meter and have received an expiation notice as a result or whether they have managed to get away with it. I am sure that is what concerns the vast majority of people. If they have received a parking ticket, most people would feel that because the parking meter expired they had not got back to their car in time, and they would pay the requisite sum. While they may regret doing so, they would probably feel it was justified and it was just their bad luck that they were not able to return to their car at the appropriate time.

Whether particular regulations or motions have been passed at particular dates would be totally irrelevant to most people. However, I realise that is not the case in the situation with regard to Mr Howie.

The Hon. J.C. Irwin: Is it irrelevant to you?

The Hon. ANNE LEVY: If I overstay a parking meter, I pay the expiation fee quite happily. I will certainly take up the detailed question which the honourable member has asked and see whether the Local Government Services Bureau can discuss the matter with the Adelaide City Council. However, in general, I think that if Mr Howie has a problem with the Adelaide City Council he should attempt to resolve his differences with the council without involving the Government in what is his private war over parking.

POLICE COMPLAINTS AUTHORITY

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

Leave granted.

The Hon. J.C. BURDETT: Earlier this afternoon, the Attorney laid on the table what were said to be the fifth and sixth annual reports of the Police Complaints Authority covering the period 1 July 1989 to 30 June 1991. The letter to you, Mr President, and to the Speaker covering the report states:

> I have the honour to present the fifth and sixth annual reports of the Police Complaints Authority to Parliament pursuant to the provisions of section 52 (1) of the Police (Complaints and Disciplinary Proceedings) Act 1985.

Section 52 (1) provides:

> The authority shall, as soon as practicable after the thirtieth day of June in each year, submit to the President of the Legislative Council and the Speaker of the House of Assembly a report upon the operations of the authority during the period of twelve months preceding that thirtieth day of June.

The fifth annual report covers the period 1 July 1989 to 30 June 1990. It is now 30 April 1992, and even with the second report which covers the period to 30 June 1991 there has been a very long lapse. I find it difficult to understand how it can be said that the reports have been submitted as soon as practicable, particularly in respect of the fifth report and even in respect of the sixth report. My questions are: for what reason was the Act not complied with—as clearly it was not complied with; and what was the reason for the delay in the laying on the table of both of these reports?

The Hon. C.J. SUMNER: Mr President, it was not I who laid the reports on the table: it was you, so you are to blame. I suppose that ministerially it is my colleague the Minister of Emergency Services who is responsible for the police, so I will refer the question to him and bring back a reply.

MOUNT LOFTY RANGES

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Minister of Water Resources a question in relation to Adelaide's future water supply.

Leave granted.

The Hon. M.J. ELLIOTT: On 24 March this year there was a very brief article in the *Advertiser* headed 'Grim water prediction for Adelaide', and I quote in part from that article as follows:

> Adelaide was likely to suffer a lack of water in the 21st century if the greenhouse effect became a reality, the Institution of Engineers said yesterday. Institution civil engineer Dr David Robinson said a greenhouse effect would reduce winter rain and increase summer rain. 'Unlike Sydney, most of Adelaide's rain falls in winter, so the reduction of this would lessen Adelaide's water supply,' Dr Robinson said.

Later, he is reported as suggesting building more reservoirs, utilising storm water and using treated effluent for industry. At present, Adelaide harvests 67 per cent of its water as runoff from the Mount Lofty Ranges, collected in creeks, reservoirs and underground aquifers. That water is given an estimated value of about $100 million, although the dollar value probably still does not give its true value as a

vital resource for South Australia. The Environment Protection Agency in the United States has developed a model to estimate impacts and, if that model is applied to the Mount Lofty Ranges, it would suggest that the increased temperatures and changes in rainfall patterns brought on by climate change could decrease the amount of runoff from the ranges by between 46 and 76 per cent. State Government pamphlets have already acknowledged that Adelaide is likely to have a mean temperature increase of about 2 degrees, accompanied by less winter rain and more summer rain. More rain in summer and less in winter will mean less runoff for collection, because more water is likely to be lost through evaporation in the higher temperatures. The impact of those few degrees is quite significant.

The result of decreased water availability from the ranges may be more reliance on what is currently Adelaide's secondary water supply, namely, the Murray River, which also serves as a primary supply for most of the State's regional cities. South Australia is at the end of the line in the Murray-Darling river system and is powerless to control the quality of the water we receive. This was illustrated recently when, despite protests and concern from South Australians, the Murray-Darling Basin Commission and the New South Wales ministerial council tripled the sewage discharge levels allowable from Albury, and the consequences of that are obvious. Just a few months ago the Government released the Mount Lofty Ranges Review and one of the primary purposes of carrying out that review was to protect Adelaide's water supply, although it takes no special account of the sorts of predictions which emanated from Mr Robinson and also from the EPA in the United States. I ask the Minister the following questions:

1. What work has been done in South Australia to determine likely impacts of greenhouse on water in the Mount Lofty Ranges catchment and, as a consequence of that work, what further proposals are being considered?

2. With predictions that there is a real possibility of significant decrease in runoff, does the Minister consider it was a sensible move by the Engineering and Water Supply Department to sell off the Bakers Gully catchment which had been reserved as a potential future dam site and which will rapidly disappear under development?

3. As a further response to the Mount Lofty Ranges Review and at this stage only one relatively minor matter has been handled which is causing some contention—the question of transferable title rights—what is proposed in future supplementary development plans following from that Mount Lofty Ranges Review to tackle some of the more complex problems in relation to Adelaide's water supply?

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

DRY AREAS

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Minister of Consumer Affairs a question on dry areas.

Leave granted.

The Hon. R.R. ROBERTS: A dry area has been in place for some time in the city of Port Pirie at the request of the Port Pirie city council and is due to expire in August 1992. I believe that the Port Pirie City Council has taken an active interest in this and cooperated with the Minister's department for some time in this area.

I understand that, since recent discussions with the Liquor Licensing Commissioner, the council had decided to explore alternative options to tackle the problem of drinking in public places before making a final decision on whether a new dry area application is necessary. I have also had discussions with other local government authorities around South Australia on this matter and I know it is an area in which many people take an interest. Can the Minister indicate whether this response from the Port Pirie council has been a common response from councils since the Government introduced its current dry areas policy last year?

The Hon. BARBARA WIESE: The honourable member will recall that last year the Government decided to change its policy on dry areas to one which would require local councils not only to submit an application for a dry area where they felt that a public drinking problem was occurring but that they should also consider before making such an application whether or not some other community response could be made to deal with the community drinking problem which would either stand alone without a dry area being in place or which could form part of a broader community strategy with a dry area component. When this policy was first introduced I think it would be true to say that a number of councils opposed it quite vigorously, because they felt that they were being asked to tackle a community problem that was largely beyond their control, and they felt also that the Government was suggesting that they should be financially responsible for the provision of services that would help to deal with the problem of public drunkenness.

As time has passed since this policy was first introduced a number of steps have been taken to talk with people in local government about the policy and I think it would be true to say that many people in the local government community have now changed their minds about this policy, can see the merits in the Government's actions and have started to look at their own community situations in rather a different way. One of the steps that the Government took in implementing this policy was to provide a $50 000 grant to the Local Government Association for the employment of an officer who will be able to assist local councils in the development of local dry areas or local dry area policies.

In addition, through the work of the Government-sponsored crime prevention units, various local committees have been established which have enabled councils to draw together community organisations and Government representatives to talk about public drunkenness and the problems that result from it. As a result, four individual councils—the City of Adelaide, the City of Port Adelaide, the City of Glenelg and the district council covering Ceduna and Thevenard—have submitted applications for dry areas under the terms of the new policy and those applications have been approved. In each case they have requested the declaration of dry areas for particular parts of their council district as part of a broader strategy which includes other actions that may overcome the long-term problems.

One thing that we have discovered with the declaration of dry areas since they first came into being is that, although they may deal with a particular public nuisance in that location, they do not deal with the underlying social problem of alcohol abuse. In many cases this simply shifts the problem from one location to another. It is true to say that in about half the places where dry areas have been established, the target has been Aboriginal people. Therefore, the use of dry areas has led to an increase in police custody of Aboriginal people, even though intoxication in a public place is no longer a criminal offence in this State. Some problems have arisen out of the old policy which we are hoping to overcome with a much broader community-based focus on the issue of public drunkenness and alcohol abuse.

In the four instances where councils have developed a community strategy, I think we shall find that the situation has much improved.

It is also true to say that some councils have reconsidered their original position on dry areas. The District Council of Central Yorke Peninsula, for example, is a case in point. The council made an application for a dry area under the new policy, but, having undertaken community consultation, it has decided that there are other ways of dealing with the problem, so it has withdrawn its application.

The City of Port Pirie, referred to by the honourable member, and the Coober Pedy and Port Lincoln councils have also chosen to look at other methods of coping with drinking problems in their community areas. It may be that ultimately they will still apply for a dry area, but it will be part of a much broader strategy. I think that the councils concerned realise that it is important to look at this issue in a more comprehensive way than local communities previously were viewing public drunkenness.

I would say that the Government's new policy is beginning to work very effectively. Of course, some councils have dry areas within their boundaries which were declared under the old policy and which are due for renewal or reconsideration some time during the course of this year. No doubt further discussion will be required with the Liquor Licensing Commissioner and relevant Government agencies to determine whether those dry areas should be continued.

Recently Cabinet approved a recommendation which I made to it relating to the extension of dry area declarations where that is desirable. When this policy was first developed it was envisaged that a dry area application would remain in place for only 12 months and would then be reviewed, the idea being that other methods should have been found within 12 months for dealing with the problem. It has become clear during the negotiations that have taken place with some councils that it will take much longer than 12 months for some of these community issues to be dealt with adequately. Therefore, when I took the recommendation to Cabinet recently for the renewal of the dry area in the Ceduna and Thevenard district, in conjunction with a broader community strategy, Cabinet also approved that that dry area should remain in place for five years because it is considered that the strategy being pursued by that council was likely to take at least that long and it seemed reasonable for the Government to agree to an extended period. I think that in future, when applications are made by individual councils, considerable flexibility will be shown by the Government and appropriate time periods will be applied in the particular situation under review.

As I said, I believe that this policy is working very successfully. It has the support of the police, who believe that this is an appropriate way of dealing with these local community problems. As individual councils, in conjunction with their local communities, are beginning to look at the problem as a much broader community problem, they are realising that it is a reasonable approach to the issue. In some cases it has enabled councils to attract Government funding for community projects that otherwise may not have been available to them.

STREAKY BAY WATER SUPPLY

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Water Resources a question about water supplies to Streaky Bay.

Leave granted.

The Hon. PETER DUNN: In recent years, due to a number of factors, principally a slight increase in the number of people in the small seaside resort of Streaky Bay, a serious water shortage has developed. A program introduced by the Engineering and Water Supply Department has received an excellent response from local people. I doubt whether we could have got a similar response in the city. They have been able to reduce their water consumption to less than 200 kilolitres per household. That was brought about by doubling the water rate when a household used more than 200 kilolitres. That was not a bad incentive. It has been very successful, because people have reduced their water consumption.

However, there is still a severe water shortage because Streaky Bay is supplied with a very small lenticular basin which has fresh water on the top, which is recharged each year from natural rainfall, but underneath is a layer of salt water. As the fresh water is used up, some of the fresh water is being permeated with some of the salt water underneath it. Therefore, the water being used during the year is gradually becoming more saltier.

Because the town wants to grow and as it is a popular tourist resort, it will need more water in future. Like people in the city, they also like to shower and have reasonable gardens. My questions are:

1. How does the E&WS propose to supply sufficient water to Streaky Bay?
2. Will it be via a branch pipeline from the Todd-Ceduna pipeline?
3. Will there be further exploration for underground water?
4. Will a reverse osmosis plant be installed to distil some of the now salty water?

The Hon. ANNE LEVY: I will refer that question to my colleague in another place and bring back a reply. I have had correspondence with the Streaky Bay council on this matter, but it is within the province of the Minister of Water Resources, so I will await an official reply from her.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

The Hon. T.G. ROBERTS: I table the first report of the Environment, Resources and Development Committee on supplementary development plans.

MEMBERS' REGISTER OF INTERESTS

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Attorney-General a question on the subject of the pecuniary interest of members of Parliament or the register of interest.

Leave granted.

The Hon. R.I. LUCAS: Earlier today in Question Time the Attorney-General responded to a question from the Hon. Carolyn Pickles. The *Hansard* record will indicate, in my judgment, some rather snide interjections from the Hon. Ms Pickles in relation to the pecuniary interests of members of Parliament, the attitude of Liberal members, and what we had to hide with respect to our attitude to the register of interests legislation.

The Attorney-General indicated in his response that I, as Leader of the Opposition, had crossed the floor and voted with Labor members in relation to the legislation. He further indicated that the Hon. Diana Laidlaw crossed the floor and voted with Labor members to support the legislation.

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: Yes, he did.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: The *Hansard* record shows that there was no division at the second or third readings of the Members of Parliament (Register of Interests) Bill.

The Hon. Anne Levy: There were.

The Hon. R.I. LUCAS: There was no division at all on the second or third readings of the Members of Parliament (Register of Interests) Bill, and the suggestion from the Attorney-General that—

The Hon. Anne Levy: Tell us about the amendments.

The Hon. R.I. LUCAS: I will tell you about the amendments. First, let me tell the Council what was the attitude of Liberal members, and there was a variety of views in relation to the—

The Hon. C.J. Sumner: That is the point I was making.

The Hon. R.I. LUCAS: That was not the point. The point the Attorney-General made was that the Liberal Party opposed it and voted against it and that Mr Lucas was the member who crossed the floor and voted with the Government. There was no division. The Leader of the Opposition at the time—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: The Leader of the Opposition at the time (Hon. Mr Cameron), on behalf of the Liberal Party, said:

> As has been indicated by the Hon. Mr Griffin, the Opposition supports this Bill in principle.

The Hon. Mr Griffin, on behalf of the Liberal Party, as the lead speaker, said:

> The Liberal Party supports the public disclosure of the interests of members of Parliament in the context of ensuring that any conflict of interest or potential conflict of interest in relation to any matter before the Parliament is known to the Parliament.

When I spoke on the Bill I said, 'I support the second reading of the Bill and the general principles underlying it.' There is an indication from the Hon. Mr De Garis, as one member, of his concerns—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: Well, there was no vote, but he indicated his opposition. But the position of the Attorney-General and the snide interjections of the Hon. Ms Pickles indicated that Liberal members had opposed the legislation and that the—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —and that the Hon. Mr Lucas had crossed the floor and voted with the Government on it. The only division that I can track down in relation to second or third readings is in the House of Assembly, where the Leader of the Opposition and I think about two-thirds of Liberal members in that House supported the legislation on a division. About four or five members, including the Hon. Mrs Adamson—as she was then—opposed the legislation, and it is not an uncommon thing that various members exercise their conscience in relation to particular issues. But the essential point is that the Liberal Party supported the legislation in the division, contrary to the snide insinuations and interjections made across the Chamber by the Hon. Ms Pickles in relation to the attitude of Liberal members and what they might or might not have to hide in relation to this legislation.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: If one is going to set up a dorothy dixer for the Attorney-General on this, at least a member in this Chamber ought to do the research and give the Attorney-General the exact information on the second and third readings.

The Hon. ANNE LEVY: On a point of order, I think the honourable member is debating a question, not explaining one, and perhaps he should ask his question.

The PRESIDENT: I uphold that point of order. The honourable member is entering into a debate. I would ask him to confine himself to the question.

The Hon. R.I. LUCAS: Mr President, I accept that, because that is quite correct: I was debating it and making a point, and making it very powerfully.

The Hon. Anne Levy interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: Mr President, I accept your ruling as being a correct one. I want to indicate to the Attorney-General and to this Council—

The Hon. I. Gilfillan: As an explanation to your question.

The Hon. R.I. LUCAS: —as an explanation to my question—and I thank the Hon. Mr Gilfillan for his assistance—is that there was no division. The only division in the Legislative Council was in relation to one amendment from the Hon. Mr Griffin relating to whether the membership of clubs and associations and things like that might have to be revealed or disclosed as part of pecuniary interests, not in relation to family trusts and financial or pecuniary interests.

Members interjecting:

The Hon. R.I. LUCAS: Well, it was a dorothy dixer. You gave the Attorney-General the wrong information and, in effect, he has misled the Council—

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Lucas will address the Chair.

The Hon. R.I. LUCAS: —by the indication in his answer that Liberal members—

The PRESIDENT: Order! The Hon. Mr Lucas will address his remarks to the Chair, not to other members.

The Hon. R.I. LUCAS: Thank you, Mr President, I certainly will. I just cannot hear myself think because of the interjections from the Hon. Ms Pickles over there, squawking on the backbench. As I said, the evidence on the public record in the *Hansard* indicates—

The Hon. C.J. Sumner: What happened on the division?

The Hon. R.I. LUCAS: On the clubs and associations? There was a division. I supported the Government.

The Hon. C.J. Sumner: You crossed the floor and joined the Government.

The Hon. R.I. LUCAS: In relation to clubs and associations, not in relation to disclosure—

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

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

The Hon. R.I. LUCAS: The Attorney-General cannot, with any integrity at all, indicate that a division on a matter in relation to clubs and associations—one particular provision of the Bill—had anything to do with the second and third readings of the Members of Parliament (Register of Interests) Bill. That is what he was saying.

The PRESIDENT: Order! The honourable member is starting to debate again.

The Hon. R.I. LUCAS: I am sorry, Mr President; I stand corrected. All I am indicating by way of explanation is that the *Hansard* record shows that the Attorney-General, assisted by snide interjections from the Hon. Ms Pickles, indicated that Liberal members opposed the legislation and the disclosure of pecuniary interests of members. What I am indi-

cating in the *Hansard* record is that that is not correct. It is not correct that Liberal members voted against it.

The Hon. Anne Levy: Question!

The PRESIDENT: The honourable member should start getting around to his question.

The Hon. R.I. LUCAS: I am certainly heading in that general direction.

The PRESIDENT: Very slowly, if I might suggest.

The Hon. R.I. LUCAS: My question to the Attorney-General is: Will the Attorney-General concede that the official *Hansard* records indicate that there was no division at all at the second and third reading—

The Hon. Barbara Wiese interjecting:

The Hon. R.I. LUCAS: Well, we like a bit of truth in this Chamber occasionally—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —something that the Hon. Ms Wiese might not like on occasions but—

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: —we would like to see a bit of truth in this Chamber on occasions.

The PRESIDENT: Order! The Hon. Mr Lucas will address his remarks through the Chair.

The Hon. R.I. LUCAS: Thank you, Mr President. I am trying to but the Minister keeps interjecting.

The PRESIDENT: The honourable member will address his remarks through me, not the Minister.

The Hon. R.I. LUCAS: I cannot hear you, Sir, over the interjections of both Ministers. Will the Attorney-General confirm that the official *Hansard* record of that debate indicates that there were no divisions at all at the second and third readings of that Bill and, therefore, no indication that Liberal members, though they might have indicated concerns, voted against the legislation at the second or third reading? Will the—

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: That is the first one. My second question is: will the Attorney-General concede that the *Hansard* record of 1983 indicates—

An honourable member interjecting:

The Hon. R.I. LUCAS: No, hold on; let me give you a bit more. Will he concede that in the House of Assembly the overwhelming majority of Liberal members, in a division on the third reading, supported the legislation with a minority of members opposing it? Will the Attorney-General—

An honourable member interjecting:

The Hon. R.I. LUCAS: We like a little bit of truth in this Chamber on occasions. Will the Attorney-General confirm that the Leader of the Opposition and the lead speaker in this Chamber—the Hon. Mr Griffin—indicated by way of the *Hansard* transcript that I have read again into the record this afternoon their support for the disclosure of pecuniary interests and the interests of members of Parliament at the second reading stage of the legislation.

It is perhaps a forlorn hope, but will the Attorney-General, if he concedes that the *Hansard* record shows that, agree that, together with the Hon. Ms Pickles with her snide questions and interjections, he misled this Parliament in relation to the Liberal Party's position on pecuniary interests? Again, perhaps it is a forlorn hope, but will the Attorney now apologise for having misled the Parliament on this issue?

An honourable member: Question!

The PRESIDENT: Order! 'Question' has been called.

The Hon. C.J. SUMNER: I am quite happy to apologise to the honourable member if my recollection on all the points was not exactly accurate. However—

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: Well, it happens as you get older, and the honourable member will probably realise that one day. I have known his memory not to be very good, and I suspect that he is having premature problems in this respect in any event. I have not checked the *Hansard* record, but the fact of the matter is that the general thrust of what I said in answer to the question asked by the Hon. Ms Pickles was correct.

The Hon. Mr Lucas has, in his so-called question, launched an attack on the Hon. Ms Pickles. In fact, on a perusal of her question, which she has now given to me, I see that she did not make any reference to the Liberal Party's attitude to this Bill.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: She didn't make any reference; I have a copy of the honourable member's—

The Hon. R.I. Lucas interjecting:

The PRESIDENT: Order, the Hon. Mr Lucas!

The Hon. C.J. SUMNER: I don't know what the honourable member has got to be so sensitive about. It seems quite astonishing that—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: It seems quite astonishing that he should have got up in the Council at the end of Question Time and basically confirmed everything I said about the matter when I answered the question. The fact that he has split hairs about whether or not there was a division on the second or third reading is quite astonishing. To suggest that one cannot vote against a Bill without dividing—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: —is absurd. It happens every day of the week.

Members interjecting:

The PRESIDENT: Order! The Council will come to order. The honourable Attorney-General.

Members interjecting:

The Hon. C.J. SUMNER: The Hon. Mr Dunn interjects, 'Why didn't—

An honourable member: Did we support it?

The Hon. C.J. SUMNER: You've had your go, and you know you have got it fouled up. Just give it a go. The Hon. Mr Dunn interjects and asks why we did not call for a division. I suspect that the very obvious answer is that on the voices it was clear that there was a majority—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: No—in favour of the second and third readings of the Bill. However, it is also quite clear (and the Hon. Mr Lucas has confirmed it) that some Liberal members opposed the legislation. They opposed it in this Council—which is what I said in answer to the question—and they opposed it in another House. I specifically said in relation to the Hon. Mr Lucas, and after an interjection from the Hon. Ms Laidlaw, who jogged my memory, that those two members at least had supported the Bill.

The Hon. R.I. Lucas: No, you didn't. You said—

The PRESIDENT: Order!

The Hon. C.J. SUMNER: In fact, the Hon. Mr Lucas did cross the floor in relation to one amendment. Whether you literally crossed the floor or whether you supported the Bill in the speech seems to me to be hardly to the point.

The point of the matter is that the Hon. Mr Lucas supported the legislation. He was one of the Liberal members who supported it, and I was merely acknowledging that fact in the answer that I gave. However, I was concerned to say in answer to the Hon. Ms Pickles' question that there was controversy within the Liberal Party about this legislation. There was opposition within the Liberal Party to this legislation, and some of those who were critical of the Minister of Tourism in fact voted against the legislation. The fact is that in this House and in another place there were Liberal members on the record as being in opposition to this legislation. That is not in dispute. Furthermore—

Members interjecting:

The Hon. C.J. SUMNER: In this Council as well. The Hon. Mr Lucas has already conceded that the Hon. Mr DeGaris opposed the legislation. If you know the Hon. Mr DeGaris you would know he does not easily change his mind. He was Leader of the Opposition in 1978 or 1979 when he led the revolt against the Labor Government's legislation, as I recollect it, and it was defeated. However, a new breed of Liberals came in in 1983 and some of them supported—

Members interjecting:

The Hon. C.J. SUMNER: That is what I said.

The PRESIDENT: Order!

An honourable member interjecting:

The PRESIDENT: Order! This is getting repetitive.

The Hon. C.J. SUMNER: That is what I said. I said that the Hon. Mr Lucas supported the legislation. I made that concession; I was being complimentary to him. Basically what I said remains true, namely, that there were Liberal members who opposed the legislation in the House of Assembly and the Legislative Council, and there were Liberal members who supported the legislation. The Hon. Mr Lucas has now usefully provided some additional information which does not really dispute what I said. In fact, on one important point it confirms that the Hon. Mr Lucas did cross the floor and vote with the Labor Party.

The Hon. R.J. Ritson: But not on the point—

The Hon. C.J. SUMNER: Well, Ms Pickles did not make any comment about the Liberal Party's attitude to the Bill at the time.

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: With respect, Mr President, you are not keeping much control here—very little at all.

The PRESIDENT: It is very hard to do, I must admit. If I took it seriously, I would throw you all out, I think. The honourable Attorney-General.

The Hon. C.J. SUMNER: Well, if you will shut them up I can complete the matter.

The PRESIDENT: I do not think the issue is worth naming anyone. The honourable Attorney-General.

The Hon. C.J. SUMNER: You never know. In summary, it was not a dorothy dix question. The honourable member showed it to me before she asked it.

An honourable member: So it was a dorothy dixer!

The PRESIDENT: Order!

The Hon. C.J. SUMNER: Secondly—

Members interjecting:

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

The Hon. C.J. SUMNER: You give him 10 minutes to carry on like nothing on earth, debate an issue—

The PRESIDENT: Order! The honourable Attorney will get on with it.

The Hon. C.J. SUMNER: Well, that's the fact of the matter, Mr President: that you gave him 10 minutes. You never pulled him up at all.

The PRESIDENT: Order! There was just as much interjection from the other side when he was on his feet as there has been from your side.

The Hon. C.J. SUMNER: Well, just bring the Council to order.

The PRESIDENT: It is just as bad from both sides of the Council.

The Hon. C.J. SUMNER: Well, you do it! Get on with it!

The PRESIDENT: Well, get on with it. The Council will come to order and the Attorney-General will get on with it.

The Hon. C.J. SUMNER: Instead of letting them run like a rabble—

The PRESIDENT: You are responding on your side as much.

The Hon. C.J. SUMNER: I am responding to the question.

The PRESIDENT: And your members on your side are responding, too, with interjections—the same as the Liberal side did with interjections.

The Hon. C.J. SUMNER: Nothing like it, and you let him get away with breaching Standing Orders for about 10 minutes.

The PRESIDENT: I am not letting anybody get away with anything.

The Hon. C.J. SUMNER: Well, you did. He debated the issue for about 10 minutes. You didn't pull him up.

The PRESIDENT: Both sides are just as much to blame.

The Hon. C.J. SUMNER: So, it's about time you got the House under control, in my view.

The PRESIDENT: I do not consider the issue sufficiently important to name anybody at this stage of time.

The Hon. C.J. SUMNER: It's about time you got the House under control.

The Hon. Diana Laidlaw: Is that a reflection on the Chair?

The Hon. C.J. SUMNER: I am fed up! We have had to put up with it for weeks during the debate on the Hon. Ms Wiese. It is a shambles, an absolute shambles, and no-one—

The PRESIDENT: Order! The honourable Attorney-General will confine his remarks to the response.

The Hon. C.J. SUMNER: The fact of the matter is that the question made no reference whatsoever to the attitude of Liberal members to this Bill in 1983. I affirmed that Liberal members were opposed to the Bill and conceded that some were not. The Hon. Mr Lucas has now provided additional information in relation to that matter, but I made it clear that the Hon. Mr Lucas supported the Bill. As he has now confirmed, on one point he crossed the floor and voted with the Labor Opposition. In the House of Assembly, there was a division on the third reading. There were Liberal members who opposed the Bill. My recollection is that, prior to 1979, there was a Bill of this kind that was opposed and, indeed, defeated by the Liberal Party.

That being the fact, the point I was making was that, at the time this was introduced, there was considerable controversy about it. There was opposition to it and perhaps we did not get the best form of legislation. Clearly, family trusts can be used to disguise interests which members might have, and I said that I intended to undertake a review of the legislation, including that provision.

SUMMARY OFFENCES (PREVENTION OF GRAFFITI VANDALISM) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 28 April. Page 4420.)

The Hon. J.C. BURDETT: I support the second reading of this Bill. It has been very belatedly introduced in two respects. First, Opposition members in the other place introduced a substantially similar Bill some years ago which was opposed by the Government. Secondly, this present Bill was introduced by the Government in another place with a great fanfare of trumpets on 14 November last year, but was not brought on for debate until 14 April 1992. I find that hiatus quite remarkable. I do not really believe it was just for the purpose of letting it lay on the table and obtaining the opinion of the public, or anything of that kind.

The Bill sets out to control what I believe is a very severe blight on society and this State, and that is the proliferation of graffiti in all sorts of places, including on buses, trains, bus stops, blank walls, shops, business premises, houses and in any other place on which this particular brand of vandal can ply his or her trade. Despite what I believe is the belated introduction of this Bill, I believe it is very necessary, and I applaud it.

We are all horrified and disgusted at the obscene outpouring of graffiti. I support the tougher penalties. I do not see how we can go any other way if we are serious about controlling graffiti. The Bill also creates a new offence of carrying a graffiti implement with intent (new section 48 (4) *(a)*). There are two separate offences, the first of which involves a person who carries a graffiti implement with the intention of using it to mark graffiti. In my view, there cannot be any complaint about this, because the intention would have to be proved. The more controversial aspect is new section 48 (4) *(b)*, which provides '... carries a graffiti implement of a prescribed class without lawful excuse in a public place or a place on which the person is trespassing or has entered without invitation'.

The second reading explanation provides the reason for the latter part of this: if someone was carrying such an implement in their own home or in the house of a friend, they would not be committing an offence. There has been objection to this as being a reverse onus of proof. There have also been objections from the point of view of civil liberties. I understand that the Law Society has objected to it. I believe that a letter was sent to all members by the Youth Affairs Council of South Australia on 27 April. The third paragraph of that letter states that case very well. It reads:

> The principal issue, we believe, is the clause covering carriage of a graffiti implement without lawful excuse in a public place. We understand, and have had confirmed through independent legal advice, that section 48 (3) *(b)* will create a situation known in law as the reverse burden of proof. In short, this means that any young person detained in a public place—

I might add that it is any person of any age; young persons are not discriminated against—

> and found to be carrying any marking implement (including such items as crayons or texta colours) may be arrested or reported and charged with an offence. If there is a conviction, the new offence carries a maximum penalty ...

And so on. Section 5 of the Summary Offences Act provides:

> Subject to any provision to the contrary, where this Act provides that an act done without lawful authority, without reasonable cause, without reasonable excuse, without lawful excuse or without consent constitutes an offence, the prosecution need not prove the absence of lawful authority, reasonable cause, reasonable excuse, lawful excuse or consent, and the onus is upon the defendant to prove any such authority, cause, excuse or consent upon which he or she relies.

It is well established (and every member in this Chamber would know) that that means that the lawful excuse would have to be established on the balance of probabilities. It is true to say that any Act which provides a reverse onus of proof, or any sort of proof of any part of a charge on a defendant, ought to be carefully scrutinised. Nonetheless, the statute books are full of such cases. When I read section 5 of the principal Act, with respect to the whole gamut of lawful excuse, lawful authority and all the rest of it, it established how many of such cases there are.

These provisions are introduced to cover situations where it would be almost impossible to obtain a conviction or even to arrest or apprehend the person suspected. Being unlawfully on premises is a classic case where an excuse has to be given. The first arm of the section 'with intent to commit a graffiti offence' would be very difficult to establish. Although the present law provides some penalties, this legislation is necessary because it is very difficult to detect people in the act of committing a graffiti offence. I find it difficult to have sympathy for that part of the letter which states:

> ... any marking implement, including such implements as crayons and texta colours.

Of course, that is not so; it is only prescribed marking instruments. That means they have to be prescribed by regulation and the regulation can be disallowed by the Parliament. The second reading explanation states:

> This class has not been defined under the regulations at this stage but will include only the most common items such as spray cans and wide felt tipped pens—

in other words, not the items referred to in the letter, such as crayons or texta colours. This matter of the prescribing of items is very important, so I ask the Attorney whether any further thought has been given to which implements are likely to be prescribed. As suggested in the other place, it is a question of whether these implements should be spelt out in the legislation instead of being prescribed by regulation. The kinds of implement used vary and the people who commit these kinds of offence are very ingenious and likely to change their tack from time that time. So, it is necessary that the regulations be flexible. As the kinds of implement have to be prescribed by regulation, I believe that, in this situation, pretty fair protection is provided.

I believe that the Legislative Review Committee does a good job of scrutiny, chaired as it is by the Hon. Mario Feleppa. It would be true to say that a great variety of regulations, some of which are very voluminous, come before the committee and it is hard for us to keep up with all that is contained in them. However, any regulations under the Summary Offences Act would be scrutinised most carefully, because it is apparent that any such regulations would bear upon the rights of individuals—human rights—and I do not believe that it is possible that any regulation prescribing implements would be passed lightly and would not be looked at carefully.

This Bill was amended in the other place by the member for Adelaide in respect of the placing of a bill or poster without lawful authority. That aspect of the Bill was not referred to in the second reading explanation, although it is covered in the explanation of the clauses. There is no doubt in my mind that graffiti is a very serious problem at present. I was going to say it causes millions, but certainly hundred of thousands of dollars—

The Hon. Diana Laidlaw: $1.3 million in the STA alone.

The Hon. J.C. BURDETT: My colleague the Hon. Diana Laidlaw informs me that it cost the STA alone $1.3 million. It is probable that the STA is the main area in which graffiti

occurs, but it is by no means the only area; so, I would be correct in saying 'millions'. Not only does graffiti cause damage in terms of money but, in many cases, it causes damage in terms of human pain and suffering, because if something of value is damaged by graffiti that can be a very serious cause of suffering.

I do not believe that we should leave this matter alone and do nothing about it or that we should not try to strengthen the present law. It seems to me that this method of strengthening the law is a pretty reasonable sort of approach to what is a very serious problem in the community. While I respect the human rights arguments in regard to the carrying of graffiti implements—in many cases, as I have suggested, this can be justified—I believe that, generally, the Bill provides a reasonable approach and reaction to the problem. We should be proactive as well as reactive, but it is the duty of the Parliament, when a matter comes before us as dramatically as it has in this case, to deal with it. I support the second reading of the Bill.

The Hon. DIANA LAIDLAW: I, too, support the second reading. I note, first, the title of the Bill—the Summary Offences (Prevention of Graffiti Vandalism) Amendment Bill. I am pleased that the term used is now 'graffiti vandalism' and not 'graffiti art' as it was. In my view, it should be called what it is, and that is 'vandalism'. In much the same way I applaud the fact that joy-riding in terms of the illegal use of motor cars is now called vehicle theft. Certainly, the term 'graffiti vandalism' reflects public intolerance of this activity which is defacing our city and our public infrastructure. It is costing ratepayers and taxpayers millions of dollars each year. In response to my interjection, Mr Burdett indicated that last year it cost the STA $1.3 million. I do not have the latest figures in respect of local councils in this State, but a survey in 1989-90 by Keep South Australia Beautiful (KESAB) found that metropolitan councils spent $400 000 on graffiti removal. I think that was before we began to suffer the high incidence of graffiti vandalism that occurred last year, so I expect that the sum would be considerably higher this year.

Last year, the *Advertiser* conducted a random survey of councils to assess the average annual graffiti and vandalism bills with the following results: Glenelg, $45 000; Adelaide, $40 000; Mitcham, $36 000; Burnside, $36 000; Noarlunga, $30 000; Brighton, $30 000; Woodville, $21 000 (June to December 1990); West Torrens, $20 000; Henley and Grange, $20 000; and about $45 000 each in Whyalla and Port Augusta. It is interesting to note that 41 per cent of secondary school students surveyed admitted that they had committed acts of graffiti. So, this is certainly a major problem that can be dealt with in part by way of penalties, for which I applaud this Bill. It can also be addressed by a number of other measures that have been dealt with in part by the two illegal use of motor vehicle Bills that were debated in this place.

Having spoken about this matter with representatives of the STA and depot managers in particular, as well as bus operators, I know that there is no doubt that public humiliation has a great effect on those who have offended in this regard. I remember at the Elizabeth bus depot the bus operators telling me that when one bus had been vandalised one evening at a cost of many tens of thousands of dollars, the depot manager rang the local headmaster. The next day the bus was at the front of the high school as the kids were leaving for the day, and those who had offended were cleaning that bus. They were publicly derided by their peers and, as I understand it, the headmaster and certainly the bus operators have reported that those kids have not offended again, nor have others from the school, to any extent that anybody has observed. The police have reported the same, that, in fact, public shame and humiliation worked very well, and better than any penalty or just a soft rap on the knuckles. Perhaps we could see more of that manner of dealing with things in the future.

This Bill creates a new offence of carrying a graffiti implement, which is defined as any implement capable of being used to mark graffiti. This definition is similar to that introduced in Victoria, which has led the way in graffiti law reform in this country. The marking of graffiti has been defined broadly to include defacing buildings, roads and other property, and severe penalties are attached. In passing, it is important to note that, while the Government is claiming that this Bill to amend the Summary Offences Act is part of its war on graffiti, the Summary Offences Act already provides penalties for a person who writes upon, soils, defaces or marks a building, wall, fence, structure, road or footpath with paint, chalk or any other means. The truth with respect to this Bill is that, while graffiti is already an offence in the Summary Offences Act, this Bill merely seeks to insert the word 'graffiti' into the Act. So, while I support the Bill, because it focuses on the issue of graffiti, which is the issue that everybody seems to be agog with at present, the Government has been very slow in reacting to this issue. I feel that perhaps that is one of the reasons why it feels it almost has to overkill now.

The Liberal Party has led the way in agitating for the Government to address this matter of graffiti. The member for Bright called for an 'adopt a station' approach, involving community groups, and some six months later the Minister of Transport seemed to think he was the first to suggest such a proposal. Now, 'adopt a station' programs are throughout the metropolitan area, and I would like to think that they are throughout the country areas as well, because many abandoned Australian National railway stations have become covered with graffiti and are badly in need of some love and care. The Liberal Party led the way in that. We certainly called for the Government to abolish free transport for students, and the STA has acknowledged publicly in a recent paper that free transport for students made it very difficult to address this issue of graffiti. The Government actually aggravated a problem that was starting at the time by introducing unlimited free travel for students, but failing to address many of the other matters related to rider responsibility to STA transport. Certainly, bus drivers will be pleased, and I suspect that train drivers will also be pleased to see this Bill and the Government's public interest (at least) in clamping down on graffiti.

I know the member for Fisher has also corresponded and been in touch with retailers, from whom we have seen a great deal of response to his initiatives to restrict the presentation of spray cans and wide-tipped pens in supermarkets and other hardware shops. Today, one can hardly go into a supermarket and find any presentation racks of cans containing any paint at all; they are merely for display, and all the other cans are kept under lock and key at the back. That is an initiative for which the community can thank the member for Fisher.

So, I feel that the Liberal Party has tried very hard in terms of addressing this issue from a variety of perspectives. However, we have called for penalties as part of a comprehensive response, and I note that in 1986 the member for Hanson called for the penalties for graffiti vandalism that the Government is currently adopting in this Bill, namely, that there be a fine of up to $2 000 or six months imprisonment. Mr Becker was calling for exactly the same fine in 1986, and the Government defeated that proposal in the

other place in 1987. The member for Hanson introduced the same Bill again in 1990 and again the Government voted against it, so it is interesting to see that in 1992 the Government has finally caught up with what the population generally wants in terms of a comprehensive attack on graffiti vandalism.

In terms of the STA, it worries me a great deal that the perception of the STA and the reality in many senses is that the railcars and buses are dirty, grubby and often not on time and that the subways are smelly and dirty and the STA is not perceived as being safe and in many cases it is not safe for travel. I feel that the fact that the Government has allowed graffiti vandalism to run rife for so long is one of the reasons why the STA is suffering a continuing major decline in fare-paying passengers, and that should be a major concern to all of us from urban, social and environmental perspectives. So, I feel that graffiti is not only a visual problem for the city—a public transport problem—but it is also one where we see people continuing to wish to use cars in part because they do not like what public transport offers. Part of that reason is that buses and trains are grubby and that the graffiti all over the stations and the like does not encourage people to travel on public transport.

So, I support the Bill and the amendment moved by the member for Adelaide and supported in the other place that, in addition to addressing this issue of graffiti, we must also address the question of bill posters, because that is equally a problem in the centre of Adelaide and other places where people are unlawfully leaving their mark on buildings, fences and the like. If people seek permission it is okay, but this Bill simply requires that they seek permission first and, if it is granted, they can go ahead, but they cannot continue to feel that they can deface public and private property, because the people of South Australia will not put up with it any longer.

The Hon. I. GILFILLAN: I oppose this Bill. The Minister of Youth Affairs, the Hon. Mike Rann, introduced the Bill in the other place in November last year. The intention of this Bill, which has now passed the House of Assembly, is to create a special offence for graffiti vandalism, introduce tough penalties and create a new offence of carrying a graffiti implement with the intention to mark graffiti.

The Democrats oppose this legislation, which is insensitive, a gross abuse of civil liberties and simply not supported by the large body of evidence concerning graffiti that has been gathered not only in this country but in many other nations around the world.

There are a number of issues that warrant closer examination, but perhaps the most significant aspect of this legislation is that it introduces the idea of reverse onus of proof. In this case it will be incumbent on the accused to prove their innocence when challenged over the carrying of a graffiti implement. We believe that this must be opposed. Indeed, when the Victorian Minister for Transport, Mr Peter Spyker, introduced similar legislation on 1 November 1990—and it is to be noted that this legislation purports to mirror the Victorian legislation—in his second reading speech he said:

> . . . in addition to the new offence of unlawfully marking graffiti the Bill introduces a further new offence of possession of a graffiti implement with the intention of using it for the purpose of unlawfully marking graffiti on property of the Public Transport Corporation. To be guilty of this offence it must be proven that the offender had the intention to use those implements to mark graffiti unlawfully . . . the onus of providing intention lies with the prosecution; it is not up to the person to prove that no intention existed. In the Government's view this preserves fundamental rights while still establishing a potent offence against graffiti.

That is the same Party to which this Government belongs espousing a very fundamental point.

The Hon. C.J. Sumner: Who are you quoting from?

The Hon. I. GILFILLAN: I am quoting Peter Spyker, the Minister for Transport in Victoria, introducing that Bill. I repeat for the edification of the Attorney:

> To be guilty of this offence it must be proven that the offender had the intention to use those implements to mark graffiti unlawfully . . . the onus of proving intention lies with the prosecution; it is not up to the person to prove that no intention existed. In the Government's view this preserves fundamental rights while still establishing a potent offence against graffiti.

I repeat Mr Spyker's words 'preserves fundamental rights', because they are at the heart of this piece of legislation that lies before us in this place. Unlike his Labor Party counterpart in Victoria, Mr Rann, in introducing this legislation in South Australia, has abandoned the principle of basic rights by introducing the idea of reverse onus of proof. It surprises me that the Attorney-General lends his support to this particular idea, given his much publicised adherence to the notion of natural justice for all. Where is the natural justice in this legislation, especially when Labor Party colleagues in another State clearly identify the need to preserve fundamental rights by not introducing a reverse onus of proof provision?

The other matter at issue here is the introduction of increased penalties for offenders, penalties that will include fines of up to $2 000 and six months gaol. The Government's own research shows that the bulk of offenders likely to be involved in illegal graffiti are aged between 12 and 17 years of age.

A State Youth Affairs Graffiti Action Kit entitled 'Tackling Graffiti in South Australia' was released last year and I attended that function. The Minister put together a seminar for tackling graffiti and I congratulate him and the organisers warmheartedly because it dealt with the basic issues of why graffiti offenders offend, what is the nature of the offence, and who are the people who are most likely to be involved in it. That to me is a much more productive course to have proceeded along, as I believe the Government to a certain extent has done, than bringing in this totally extraneous piece of unnecessary, punitive legislation. I was at the function last year when this kit was launched. A section of that kit states:

> . . . the vast majority of graffiti offenders are in the 12 to 17-year-old group and in South Australia as well as elsewhere it is predominantly male activity.

The same publication states that in identifying the problem of graffiti it 'would be argued that graffiti is likely to be a temporary phenomenon'. Why are we bringing in this draconian legislation to deal with what the Government has identified as 'likely to be a temporary phenomenon'?

Why then, when there is not a single shred of documentary evidence to prove otherwise, does this Government insist on resorting to heavy-handed, draconian penalties to deal with this problem? Time and time again the evidence gathered from around the world in countries such as the United States, Canada, Britain, France and in other States such as Western Australia, Victoria and Queensland shows that the most effective measures for dealing with graffiti do not include an increase in penalties, The most effective measures involve quick repairs and fast removal of graffiti, crime prevention through environmental design strategies in the planning and design stages, use of vandal-proof material, schools, police and community education programs to discourage vandalism and graffiti, making trains and stations aesthetically pleasing, patrolling trains, depots and stations regularly and encouraging the community to police their own systems.

Other methods start with the tools of graffiti, such as spray paint cans and other paints, by encouraging the production of paints that are easier to remove, better solvents, better security for cans, restricting sale to adults and removing marking pens that are not water soluble from the market. There can be other initiatives by the introduction of preventive and diversionary programs to allow graffitists to practise their art legally and by organising community leisure, sport and entertainment programs that take kids from the temptation to become involved in graffiti. None of these suggestions are new. All of them have been tried with great success overseas and interstate and indeed most of these suggestions come from the Government's own youth programs. Yet the Government cannot go down this path alone; instead it walks hand in hand with a police state mentality that insists on a penalty-led recovery.

I believe there already exists ample scope for graffitists to be dealt with effectively under existing statute. For example, section 48 of the Summary Offences Act 1953, which is to be repealed under this Bill, adequately covers the issue of graffiti by making it an offence to mark or deface public property with 'paint, chalk or by any other means'. The penalty is a $1 000 fine or three months gaol. Surely those penalties are adequate if they are used as a deterrent by the courts. Why do they need to be doubled? Can the Attorney explain and produce evidence to show why the current penalty is not adequate and why $2 000 in fines is likely to prove more effective than $1 000, especially when the likely offenders are 12 to 17 year old children? That is stated in their own document.

In addition, the Criminal Law Consolidation Act 1935 (Part IV: Offences with Respect to Property, sections 84, 85, 86 and 87) provides for wide-ranging powers to deal with damaging property. The penalties are high, ranging from two to 10 years gaol, with section 86 specifically dealing with 'possession of object with intent to damage property'. Section 86 (1) states:

> A person who has the custody or control of an object that the person intends to use, or to cause or permit another person to use, to damage property of another without lawful authority to do so, shall be guilty of an offence.

The penalty is imprisonment for three years. This section could deal effectively with graffiti implements or, if the Attorney-General believes the penalties to be too harsh in relation to these provisions, perhaps the penalties could be adjusted.

Of great significance is that the Australian Institute of Criminology has 11 recommendations for the prevention of graffiti. Indeed, they are published in the kit that was published and distributed by the Minister of Youth Affairs, to which I have referred.

I have seen the report of the debate that took place on this issue in the other place—31 pages of *Hansard* filled with members from both sides clamouring to be heard on just how strong they were on the issue of graffiti vandalism. They may be interested to know that, of the 11 recommendations from the Australian Institute of Criminology, not one involved increasing penalties or making carrying an offence. In the debate, not once did anyone produce a single piece of fact, document or other evidence to show that an increase in penalties will have a measurable effect on reducing the incidence of graffiti in our community.

I call on the Attorney-General to produce that evidence in this debate to prove that a penalty-led recovery will be effective; otherwise, this legislation will be exposed for what I believe it to be—a knee-jerk reaction by the Government to a problem within a small section of our community, and responding to clamour from the media in particular.

In opposing the second reading, I ask one question: where are the so-called libertarians within this Government who are prepared to come forward and protect citizens from this objectionable reverse-onus piece of legislation?

The Hon. John Burdett quoted from a letter which we all received from the Youth Affairs Council of South Australia, and I will read it into *Hansard*. Of course, this particular copy of the letter was addressed to me. It states:

> Summary Offences (Prevention of Graffiti Vandalism) Amendment Bill 1991. I write as a matter or urgency concerning the proposed amendments to the Summary Offences Act. The Youth Affairs Council has examined the proposed legislation carefully and has a number of serious concerns which we ask that you consider and raise with other members during the debate on the amendment Bill. The principal issue we believe is the clause covering carriage of a graffiti implement without lawful excuse in a public place. We understand and have had confirmed through independent legal advice that section 48 (3) *(b)* will create a situation known in law as reverse burden of proof. In short, this means that any young person detained in a public place and found to be carrying any marking implement, (including such items as crayons or texta colours) may be arrested or reported and charged with an offence. If there is a conviction, the new offence carries a maximum penalty of a $2 000 fine or six months imprisonment. This change will put the carriage of an implement such as a texta colour, in the same category as offensive weapons and housebreaking tools, in the eyes of the law. These are also areas where the reverse burden of proof applies, and are notoriously difficult areas for the court system to administer.
>
> In our view this clause is both dangerous and counterproductive. Although such a sensitive provision of the Summary Offences Act may well be carefully policed in the short term, there will inevitably be cases where the Act will be used to convict and punish young people who are unable to convince a court that they were not intending to mark graffiti. Such a situation is more likely to occur in a climate of public indignation led by intense media coverage of graffiti vandalism. (We believe that such coverage has actually fuelled the instance of graffiti 'tagging'—particularly in prominent public places, such as war memorials, which are guaranteed to evoke maximum outrage from mainstream society).
>
> The proposed legislation will serve to bring the law into disrepute amongst large numbers of young people, and certainly increases the risk of a miscarriage of justice. For the small number of persistent graffiti offenders, the legislation will be seen only as a minor challenge. Those detained by police with implements which may be in use to mark graffiti will naturally invent plausible 'lawful excuses', meaning that police will still have to catch them in the act, or trace evidence from fresh graffiti to match implements in the possession of the individuals. This will serve to further frustrate police attempts to deter graffiti vandalism, and may provoke defiance of the statute. This is not the hallmark of effective legislation, and may in fact defeat the original intention to deter offending. Whilst the Youth Affairs Council disclaims an apologist's stand on graffiti vandalism, we do not believe that the proposed penalties are justified or well-considered. To encourage respect for the law, punishment must be in proportion to the offence. We cannot envisage a situation where graffiti would deserve a gaol term or any duration whatsoever. Such a circumstance would be clear evidence of a bankrupt society, unable to deal constructively with minor offending. We do, however, foresee circumstances where some young people are imprisoned by default. Young people from low income families, unemployed or homeless, would have little opportunity to pay a heavy fine, for example. Our experience is that some will choose gaol. This is an unacceptable situation and must not be allowed to happen.
>
> Where there is an attempt to damage, or damage is done to public property (including graffiti), we believe the law already contains relevant provisions under sections 84 to 86 of the Criminal Law Consolidation Act. The Youth Affairs Council asks that you consider these issues in your deliberations on the Amendment Bill. Like many South Australians we are supportive of constructive solutions to the problems of graffiti vandalism. However, we do not believe that this legislation will improve the situation, and will put considerable additional pressure on relationships between police and young people.
>
> Kim Davey, Executive Officer.

Members can see that the Youth Affairs Council has serious misgivings about the effect of this ill-conceived piece of legislation.

There are a couple of matters that I would like to comment on before concluding my remarks. I noticed from the observations of the Hon. John Burdett that he believed that, through the prescribing of classes of graffiti implements, quite a limited number of articles would be included. However, I point out that we have no clear undertaking of that, and many materials can be used to cause objectionable graffiti. The literature I have and the second reading explanation lists pens, lipsticks and boot polishes, which can be carried legally unless they are being carried specifically with the intent of marking graffiti.

According to the second reading explanation, any of these products can be carried legally, but they are carried illegally if they are allegedly being carried with the intention of marking graffiti—not that they have done so. It refers to the intention of marking graffiti. The explanation states further:

> Section 5 of the Summary Offences Act already places the onus on the defendant to prove lawful authority. An excuse that sounds plausible but cannot be backed up with proof, will not be sufficient to have the charge dropped.

It really exposes young people—not necessarily young people, because this legislation applies to anyone of any age—to an incredible hazard. Young people of certain appearances, positions and social backgrounds are already targeted and under suspicion. They start off behind the 'Let's give them a fair go' base. I can see unforeseen circumstances, but I think it is so unnecessary and that the risks are so great, that this Bill ought to be thrown out at the second reading stage.

The methods of dealing with graffiti are proving to be substantially successful, and I cite Gosnells, the local government area in Western Australia, which was referred to in this excellent document. The Mayor of Gosnells was a prime speaker at the function which Minister Rann organised and, without anything dealing with penalties or the carrying of graffiti implements, but by an enlightened approach to dealing with the young people and offering alternative activities and a general scrutiny of locations, they have reduced graffiti by a measurable 50 per cent. Brisbane has had similar results by an equally enlightened attitude of providing areas for graffiti art and expression.

It is so frustrating for me to have read the document with admiration and to have listened to the contribution at the seminar regarding constructive ways of dealing with the offence of graffiti, and to now see this piece of legislation before us, which really achieves nothing, in my mind, to diminish the incidence of graffiti. It opens up a Pandora's box of most unfortunate litigation, intimidation and alienation of young people to the police, particularly, and one can imagine perfectly innocent people carrying some of these implements but, because of a preconceived interpretation by a police officer, they are charged with an offence. Because the reverse onus applies they have to prove that they had no such intention, that they are straightforward, honest citizens, going about their business with no intention to offend.

I can best conclude by quoting again from the second reading explanation. The overwhelming truth of the situation relates to solutions like those put forward by the Australian Institute of Criminology. The following is a list of the headings put forward by the institute:

Quick repairs and fast removal of graffiti;

Crime prevention through environmental design strategies in the planning and design stages;

Use of vandal-proof material;

Schools, police and community education programs;

Make trains and stations aesthetically pleasing;

Patrol trains and other places;

Encourage the community to police own systems;

Electronic surveillance; closed circuit TV in particularly vulnerable areas;

Attack the tools; encourage production of paints that do not cause the same problem;

Make it more difficult to steal graffiti implements;

Introduce preventative and diversionary programs to allow graffitists to practise their art legally; and

Organise leisure, sports and entertainment programs.

The Minister states:

> The overwhelming evidence from interstate and overseas suggests that long-term solutions to the underlying causes of graffiti vandalism are to be found in educative and preventive strategies in addition to the appropriate punitive measures.

I put it to the Council that the appropriate punitive measures are already in place with a $1 000 fine and three months gaol for the offence of defacing. All that we need is the energy and determination to apply those measures. In terms of increasing these penalties, how many 12-year-olds and 17-year-olds do we want to lock away for six months and fine $2 000? By creating a reverse onus of proof I believe we are taking a counterproductive step. It is a knee-jerk reaction pandering to what has been some rather sensational publicity. I would like to think that many other members of this place will agree with me and that we will defeat the Bill at the second reading stage.

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

WILDERNESS PROTECTION BILL

Adjourned debate on second reading.

(Continued from 15 April. Page 4317.)

The Hon. DIANA LAIDLAW: This is an important Bill that many people in this place and in the community at large have been anxious to see introduced and debated. I would like to do justice to all the representations that the Liberal Party has received on this Bill, but I do not intend to speak at length due to the backlog of Bills that we must debate in the next few days before the Council rises at the end of this session.

The Liberal Party supports the second reading of this Bill. I note that since 1988 the Liberal Party has supported the concept of wilderness protection in legislation. Certainly, in 1987 the Liberal Party coalition Government in New South Wales was the first Government to pass legislation as a separate wilderness Act. The United States of America has had such legislation since 1964. While Australia remains in the grip of a recession, with all its consequential horrors, we are privileged in some senses still to be able to claim that we still have areas in our State and nation that can be classified as wilderness. Few other continents are so fortunate. They have been settled for much longer and have much larger rates of population increase, much greater population to land ratios and milder climates.

Perhaps the only exception would be Antarctica—the last great wilderness on earth. This extraordinary land to our south remains a wilderness, probably because it has no native-born population, the harsh climate and because wide community pressure has forced the Antarctic treaty partners last year to abandon a goal to establish a minerals convention. The continent now appears to be safe from mining for at least the next 50 years. Tourism is possibly the only foreseeable threat, although defence and military build-ups on the Antarctic peninsula adjacent to South America may also place the wilderness at risk.

The wilderness legislation before the Parliament arises from community agitation about the very same matters that galvanised Australia to lead the world debate to maintain

Antarctica as a world wilderness park. I know that members of the Wilderness Society, in particular, have been lobbying for this measure for some four or five years and I commend them for their diligence and foresight. Research suggests that if we proceed at the present rate of destruction of wilderness there will be no wilderness left worldwide in approximately three decades. I do not think even the most gung-ho developer in this State or country would in their heart support or allow such a thing to occur.

Already in Australia we have the dubious record of wiping out most of our native species, and we have one of the highest records of extinct species in the world. When debating this Bill in the other place the member for Fisher, Mr Such, made an interesting observation about the value that we as a society place on parts of our culture. I will quote the honourable member because, in part, his comments put into perspective some of the dilemmas and contradictions in our society. The honourable member stated:

> I am often puzzled by the emphasis that people put on paintings and works of art, and this is no criticism of that, but I have yet to find a person who can replicate the beauty of a parrot or the other miracles that we see in nature. Yet we create our own shrines to celebrate our own artworks, which in no way match the brilliance of nature. We need to remember that we need wilderness and that the wilderness does not need us.

I suppose the only remark I would make in terms of the last part of that statement is that today the wilderness does need our help to protect it. It certainly does not need us today for the beauty and inspiration that the area can provide for those who want to look at it, listen to it and enjoy it. However, it needs us to help protect the little remaining wilderness of this State.

However, in general, I feel that the member for Fisher is spot on in his remarks: that we do not spend enough time appreciating the natural wonders and that we build castles, museums and the like to protect and celebrate our man-made treasures—in the broadest sense.

Perhaps some of this is changing and the Bill before us is evidence of that. In clause 3, which relates to interpretation, the Bill provides for a set of criteria for determining whether or not land should be regarded as wilderness. The criteria are as follows:

> *(a)* the land and its ecosystems must not have been affected, or must have been affected to only a minor extent, by modern technology;
>
> *(b)* the land and its ecosystems must not have been seriously affected by exotic animals or plants or other exotic organisms.

This definition differs from that adopted by the world conservation bodies. That definition reads as follows:

> A large tract of land remote at its core from access and settlement, substantially unmodified by modern technological society or capable of being restored to that state and of sufficient size to make practical the long-term protection of its natural systems.

I suggest that this definition is the ultimate or ideal. The ideal is not necessarily always practical to apply if we want to apply the ambit of this legislation to any areas of the State.

The Minister for Environment and Planning has acknowledged that the definition of 'wilderness' in the Bill recognises that there is probably no pristine land left, that there is no land, or at least not in a sufficient size that has not been affected in some way by some form of modern technology, whether that be rabbits, camels or goats, four-wheel drives, pipelines or water bores. This legislation is a compromise. It is an attempt to make the best of what we have left.

In seeking to achieve this worthy goal, concerns about the zeal with which the legislation may be applied have been tempered by the insertion of criteria relating to wilderness. These guidelines will not allow a whole lot of land to be tied up as wilderness just because some zealot in the State Administration Centre or within some association believes that a land grab may be a good idea.

I understand that much of the land that is likely to be deemed wilderness is already within the National Parks and Wildlife system. Also, the actual land area when identified may comprise no more than 2 per cent of the State's land mass of some 100 million hectares. Some may argue that this is a great area, but when the Unnamed Conservation Park and many of the arid parts of the State are taken into consideration, I suggest that the 2 per cent will incur little change to what we already know. By contrast, some 20 per cent of the State is already under the reserve system in approximately 240 parks in South Australia.

This legislation, which attempts to give areas of land in our current reserve system a higher degree of recognition protection, has been drafted to ensure that there are consistencies between this and the National Parks and Wildlife Act. The Bill also provides a good opportunity for public input for decisions about wilderness areas, which is not a feature of the current reserve legislation. In addition, the Bill provides for the adoption and implementation of management plans for wilderness areas, the exclusion of mining, mineral exploration and grazing from wilderness areas, recognition for the existing rights of companies that may have tenements over areas which could be declared wilderness protection zones, recognition for Aboriginal heritage and traditional culture, and an annual reporting process to Parliament. The Bill also requires that the Crown is to be bound.

I have a number of misgivings about the Bill. The first is that this is not a separate Bill. I indicated that it has been Liberal Party policy since 1988 to support separate wilderness legislation. I do not believe that the Party has determined whether that should be separate legislation or whether it should be incorporated within a parks and reserves system. I am concerned that there is a plethora of environmental legislation in South Australia. I recall when debating the marine environment protection legislation that the Minister in the other place acknowledged the need for a rationalisation of legislation and a reduction in the number of statutory committees. However, now we have another Act and two more committees. One is a statutory Wilderness Advisory Committee; the other is an Interdepartmental Natural Resources Management Standing Committee.

While not defined in the legislation, I understand that the latter committee consists of a number of chief executives from a whole range of natural resources areas of Government, including Environment and Planning, Lands, Water Resources, Fisheries, Agriculture, and Mines and Energy. This interdepartmental committee is the forerunner of an expanded Natural Resources Council to be addressed as part of a revision of the National Parks and Wildlife Act next session. The revision is an important exercise so that we can clear up the confusion about the status of different parks—recreation parks, conservation parks, national parks, marine parks, and now, wilderness parks, and the role of the various committees that have been placed in charge of those parks.

So, I have some misgivings about the issue of separate legislation in this regard, but I appreciate the majority view of the Party that it is desirable at this time that, when there is such confusion about so many pieces of environment legislation, wilderness is entitled to a separate piece of legislation at least at this time until the Minister has dealt with all the other pieces of environmental land legislation.

My second concern relates to the Wilderness Advisory Committee, which has a comprehensive range of responsi-

bilities. The Bill does not set up another bureaucratic structure, and I should note that, because the Act will be administered by the Department of Environment and Planning as part of its responsibilities for the State's parks system. Its management will be undertaken by staff of the National Parks and Wildlife Service. However, we are all well aware that the National Parks and Wildlife Service is in desperate need of funds to enable it to perform its current tasks, let alone new ones envisaged in this Bill. Only 60 per cent of the State's existing parks are covered by management plans, and few of these plans have received the funds necessary at this time to ensure that the management plans are implemented properly, let alone to ensure that feral animals, noxious weeds, pest plants and exotic vegetation are eliminated. Yet, this new Act requires the preparation of further management plans, and this time particular skills will be required to implement the plans and allocate the funds.

The functions designated in the Act and charged to the Wilderness Advisory Committee include the commissioning of research, public education about the significance of wilderness, and the assessment of land that warrants restoration to a condition that justifies wilderness protection. There is no suggestion in the Minister's second reading explanation—and I looked quite thoroughly, I thought, through the debate in this place and through other public statements by the Minister—of a reference to budgets for the implementation of this wilderness legislation. We do not know what budget is to be provided, what new funds will be available, and whether funds will be diverted from the current inadequately funded National Parks and Wildlife Service budget. Nor do we know what funds will be available for restoration projects, if such projects are deemed necessary for the area to be proclaimed wilderness.

The Minister is silent on these matters, yet she knows that there is disquiet in the community about the increase in recent years of areas under the national parks system at a time when funds for management have been declining. I fear that this wilderness legislation will aggravate those fears that have been stated so many times in recent years in respect of national parks and wildlife legislation and its administration because of budget problems.

The third issue I raise briefly concerns exploration. In the past, exploration and mining have been undertaken with little regard for the environment. I have visited mining sites throughout South Australia and in the north of Australia with members of my family. On many occasions it would be fair to say that those sites have resembled bomb sites. When it was not viable to continue mining, often the company or a group of miners would simply pick up camp and move on. Today, that does not happen to the same extent. Modern technology allows mining to be undertaken at any depth. It is not limited as it was in the past, and miners are able to extract much more mineral content from the stone mined. Miners have also left areas from time to time when commodity prices collapsed and they have always left their debris behind.

That does not only occur with miners. We have seen this with farmers and we certainly saw it in Antarctica when Mawson, who had his hut at Commonwealth Bay, Scott, Shackelton and many of the early explorers left debris behind. Today that debris is seen as an archaeological treasure and not as an environmental eyesore.

The Hon. R.J. Ritson interjecting:

The Hon. DIANA LAIDLAW: Well, they may have done that also. There were many deaths, but they were not intentional as was leaving equipment at the campsite. Today, our attitudes to this have changed. Members of this Parliament claim that they are more enlightened towards the environment. Certainly, miners and farmers are more aware of the impact of their activities on the environment.

We must all accept that technology has changed. It is not ruthless in terms of its impact on the environment but more advanced and less intrusive. We should take account of that fact and not look merely at the past when we make up our mind about this Bill and its future impact. I am well aware of the aerial survey work conducted by a number of mining companies, and I will elaborate on that in the Committee stage of this Bill. However, it is important for all members to be well aware of the fact that aerial exploration helps to focus on specific areas and therefore limits the need for more intensive disruptive ground surveys. I feel very strongly that aerial exploration should be required not in respect of wilderness areas but of zones proposed under this Bill, so that before they are made zones and tied up almost for all time we are well aware as a Parliament and a community just what we are tying up for all time.

However, this Bill does contain provisions that allow both Houses of Parliament to abolish or change the boundaries of wilderness areas or zones. I suspect that the Minister would not have included that provision unless she was prepared to accept some extraordinary circumstances such as mining activity. It is also possible that, if a wilderness area is small in size, the entrance to an underground mine could be well outside that region and the zone need not be disturbed at all by work being undertaken many miles underneath the surface.

At a time when this State is almost bankrupt, when Moody's and the others are dropping our credit rating, we have an obligation to the future not only to seek to protect the environment for future generations but to ensure that financially we do not leave our State crippled so that future generations do not have the opportunity to exercise many of the options that members of this place and the community have been able to enjoy.

I believe that, in essence, aerial surveys are very important and that we should encourage such work before we declare and transfer a wilderness zone to a wilderness area with its enhanced powers of protection. The Liberal Party will support this Bill. Perhaps the issue of exploration in zones will be somewhat contentious for some members, but I indicate that, unlike vegetation and soil on the surface that we seek to protect because we can see what is there, we cannot see what is underneath the surface until we perform some form of environmentally sensitive exploration. What is underneath the surface does not necessarily represent the topography or vegetation on the surface, and in my view we should be able to accommodate both the need to protect the State economically and promote development as well as to protect, promote and safeguard our wilderness areas.

The Wilderness Society has expressed interest in interim protection for wilderness areas. I respect the fact that such interim protection is available in national parks and wildlife legislation. I find it rather difficult to rationalise why this type of enhanced interim wilderness protection legislation is not available. It is available in national parks and wildlife legislation but not in this legislation, so I look forward to an explanation from the Minister. I will be interested to see what the Minister says. I read the debate in the other place, and she seemed to duck and weave around the question, but I would like to ask specifically why she claims this is enhanced legislation in terms of environmental protection, and is prepared to accept interim status and protection in national parks and wildlife legislation but not in this wilderness legislation. I am confused about the Minister's position, so I seek clarification.

I am aware that the Wilderness Society is very keen to see that matter addressed. Personally, I am sympathetic to that position, but as this matter has not been discussed in the Party room recently I will not presume too much at this stage.

I was asked to read correspondence from the apiculture industry—the bee industry—which submits that very little if any of South Australia fits into the category of a true wilderness area. It argues very strongly in support of the native vegetation legislation, but questions the value of moving into this field of wilderness legislation without also taking account of the interests of its industry, and I believe that that is a consideration that should be taken into account by the Wilderness Advisory Committee when it seeks public opinion on areas that it will be recommending for wilderness protection, as either an area or a zone. That correspondence and representation came from Mr Leigh Duffield.

I have also received representations today from the Fencing Industry Association of South Australia, which is very concerned about what has been happening in Victoria in particular, in terms of restricting the area where they can cut brush. I would just like to acknowledge that it has taken sufficient interest in this legislation to write to the Liberal Party, and it has not asked for any changes or amendments to this Bill but simply asked that its interest as an industry be considered in general environmental legislation. I would like to let it know that the Liberal Party has considered its views in this regard. The Liberal Party supports the second reading.

The Hon. M.J. ELLIOTT: I support the second reading. The Democrats have supported the concept of wilderness protection for a very long time. Australia's inland wilderness has long been described as the dead heart of the continent by people wearing European-designed blinkers. This blinkered vision of early European Australians has been both a blessing and a curse. It has led to the inland being largely ignored and therefore left untouched, but it has also led us to believe that, beyond what can be dug from the ground, it is worthless. We as a society are only just beginning to realise the richness and value of wilderness as wilderness for its own sake, and not as a potential source of resources. Wilderness must be protected and recognised as valuable in its own right.

National and international focus has shifted to recognising all natural systems as valuable planetary assets. In South Australia we have no large forests of spectacular trees; we have no snow capped mountains and wild alpine rivers; but we have arid wilderness which is no less spectacular, genetically important or biologically diverse. What is left of that wilderness must be preserved now and managed in such a way that minimises outside disturbance on its natural systems.

Protection of wilderness is both a scientific and a moral issue. It is a recognition of the right of plants, animals and ecosystems to exist without necessarily being of immediate human or economic benefit. In this generation we are beginning to challenge the homocentric view our culture has held of the world, just as our society has in the past challenged slavery and discrimination based on gender and race. The step towards re-evaluating our place in the earth's is not merely important—it is vital. The natural systems that support us are being eroded by our activities. Without a check on those activities we will destroy that which sustains and keeps us.

One question being asked often through the discussions on wilderness protection legislation is 'Why separate legislation, for wilderness given that much of the land targeted for protection is already in the parks system?' Wilderness is not mentioned specifically in any South Australian law. Its value as wilderness means it needs special status and recognition in the law. It also needs to be treated in a way that puts the preservation of wilderness values as the priority. This cannot be achieved through the National Parks and Wildlife Act 1972. This Act recognises and provides for multiple uses of the areas under its protection, and as a result South Australia's parks and reserves are under increasing threat from tourism developments, mining activities and grazing.

We have seen in this Chamber a Government use its legislative power to approve a large tourism development for a sensitive area of the Flinders Ranges National Park in the face of quite strong community opposition. We have also heard of the grazing pressure being placed on the flood plain vegetation of the Innamincka Regional Reserve and only months ago the granting of a commercial fishing licence for another section of the same wetland system. The potential for mineral and petroleum exploration licences exists for all but 3.8 per cent of our national park system. One of the great lies perpetuated by the mining lobby is how much of South Australia is locked away: 3.8 per cent of the national park system is locked away. Every new park since 1970 has had at the same time an announcement and an allowance for exploration to continue within the park.

While I mention national parks, I think it is worth while to look at what has been done with those, because it gives some indication as to what will happen with wilderness if we are not committed. Since modern park management began in 1972, the area in parks has been expanded enormously—in fact, by a factor of five. The number of parks staff has barely doubled in the same period. Although I do not have a breakdown, I suspect that a great majority of those are based around the metropolitan parks, which are more recreation parks than conservation parks. Government spending on parks presently approximates spending on one major metropolitan high school. And that is for the management of 17 per cent of the State.

The development of draft management plans has not kept pace with the creation of new parks; in fact there are as many parks now waiting for draft management plans as there were in 1972. The situation is even worse when it comes to authorised management plans. Most authorised management plans, which, according to the National Parks and Wildlife Service Act are the basis on which all work in parks is to be done, have not been carried out. This is particularly true when it comes to feral animal and weed control.

Examples of things not being done include: the instituting of procedures to eliminate the spread of phytophthora or dieback in Cleland; the reintroduction of the native wildlife back into Belair National Park and other parks; and the establishment of the agreed number of staff to manage the Flinders Ranges National Park.

The question of park staff is such that recent draft management plans refuse to identify the number of staff required to carry it out. That is despite an undertaking by the previous Minister of Environment and Planning that the number of staff would be identified in each plan. The Government is obviously embarrassed by its failure to do what is required. Nowhere has there ever been an identification of the sums of money required and the time-line over which it will be made available to carry out the work of the management plans.

At the informal level, some parks having high conservation value have been categorised 'recreation parks' so as to allow boundary changes at the whim of the Government.

The effect has been though to create an inappropriate perception of the parks role within the minds of some members of the public, some National Parks and Wildlife Service staff and local government. An obvious example of this is the Onkaparinga River Recretion Park.

In misguiding the public about national park management in this State, nothing has been more dramatic than the creation of two major national parks, Witjira and Lake Eyre, under the condition that mining can take place in them at any time in the future. That is quite contrary to any definition of what is a national park held at the Federal or international level.

The rush to establish as many parks as possible without thought to their future management and the cost of that management has led to the creation of regional reserves. This park category allows for mining and grazing in the reserve and has put at risk one of the world's most significant wetlands, as I mentioned earlier. Their creation has been a deliberate exercise by the Government to create an impression in the minds of the public that the Government is concerned about the environment and is doing something about it. The result is that we have an extensive park system which is grossly and manifestly understaffed and in many cases inappropriately categorised. Some 70 per cent of the system is open to mining; the majority of it is without management plans. It is being eroded by public visitation and it is rife with feral animals and weeds. I fear, although I am supportive of the legislation, that wilderness will go the same way of neglect.

A separate wilderness Act is needed to ensure that the precious, still untouched areas of the State—of which there are very few now—remain free of modern human impact in perpetuity and are valued because of their wilderness qualities. But that Act must be resourced to ensure that it will have any effect. There has been much debate about the need to know what resources are being denied so that a so-called rational decision can be made about the wilderness qualities of an area. Wilderness qualities do not change on the basis of what resources are there. An area is a wilderness by definition, by the fact that it is untouched or largely untouched. As I said, there are not many of those areas left. An attempt to try to measure the wilderness value of those few untouched areas against potential resources is almost impossible.

It is worth noting that at Federal level the Liberal Party, along with the Labor Party and the Democrats, supported a no mining and no economic development policy in the Antarctic. I believe that all Parties did that because they recognised that there was such a thing as wilderness and that that value transcends the value of anything else that may be there. Many people were surprised that the three major Parties agreed on that, but it is a very important step forward—the recognition of wilderness in its own right. With so little of South Australia which would qualify for that same categorisation, I hope that the three Parties are as willing to recognise that there are areas in South Australia which deserve the same protection as they are willing to recognise the Antarctic should have.

We must ensure that this legislation fulfils Parliament's and the community's aims long after we as individuals have ceased to be influential in this place and long after the maggots have done their job. The Democrats see this Bill as a basis for good legislation. The emphasis on management of wilderness after it has been identified and protected and on rehabilitation of areas with only minimal interference is supported.

To illustrate this position, I should like to comment briefly on some of the submissions made to members by the Chamber of Commerce and Industry. The chamber does not think that wilderness protection legislation is necessary. As I have already stated, the Australian Democrats, obviously along with the Government, believe it is necessary. It is necessary simply because there is so little true wilderness left. It is necessary to protect genetic resources and natural ecosystems for the benefit of future generations. Unfortunately, this cannot be guaranteed to such an extent through the national parks system because much of it is still open to multiple uses, including mining exploration. There is a need for legislation with wilderness protection as its primary focus.

The chamber wants exploration and mining access to areas proclaimed as wilderness protection areas under the proposed Act. It should be obvious that this would negate the whole point of having set the area aside for protection with minimum interference, so that suggestion is rejected. An area is a wilderness area or it is not. Either we believe in protection of wilderness or we do not. If we do, the very idea of allowing exploration with the possibility of finding something undermines that original position. Of course, there is a logical inconsistency. If ultimately this planet needs to plunder the resources under the few remaining wilderness areas, that is an admission that there are not enough resources outside. It is an admission, therefore, that resources are finite. If we cannot survive with the resources outside wilderness areas, we will survive in relative terms for a very brief period beyond that by relying upon the resources within wilderness areas. It is a logical inconsistency and an admission that there are limits on growth and on the way our society can behave.

The chamber wants the potential economic return of a wilderness area taken into consideration when the Minister decides whether or not to declare a wilderness protection area. I reiterate that the Australian Democrats believe that protection of wilderness, because of its importance as wilderness, must be the primary focus of the legislation. It is unacceptable that only areas which are not considered valuable for other, especially commercial, uses can be declared wilderness. Resource exploitation is not sustainable. The fact that mining companies continually need to go into new areas is proof of the point. This is our last chance to protect wilderness. We will not be able to recreate it after it has been destroyed.

In its submission the chamber says that the holder of an exploration licence must be asked to consent in writing to an area being listed as an interim wilderness area. The Bill provides that when an area is identified as having wilderness potential but it has an existing mining tenement, it can be proclaimed a wilderness protection zone. No new mining leases are allowed in that area although the existing tenement may be renewed.

The Democrats will be looking at several amendments to the Bill. First, we are looking at a periodic review of the effect of mining activity on wilderness protection zones. I would expect it to receive the support of members of this place. The amendment that I shall move will be in the same form as the amendment moved by the Liberal Party when we considered regional reserves under the National Parks and Wildlife Act in the past two years. Considering the relative importance of wilderness against regional reserves, we expect the concept of a periodic review to be more acceptable in this instance than in relation to regional reserves.

We also believe it is important to have an amendment to provide for consultation with traditional owners of areas nominated or identified for wilderness protection. It must be recognised that substantial amounts of our wilderness

areas are likely to be in outback South Australia where there are significant interests of traditional owners. Failure to address their concerns and to recognise that we shall have to balance the interests of traditional owners and wilderness would be very significant. For that reason, we believe that consultation with traditional owners is important.

We also propose a minor change in relation to the appointment of members to the wilderness advisory committee. We believe that the Wilderness Society is the obvious and only group to nominate a community representative—a person interested in wilderness—to the committee. We will be moving such an amendment. The Hon. Ms Laidlaw raised the question of interim protection. That matter was also raised by the Liberal Party in the Lower House. The Democrats will move an amendment to allow interim protection of wilderness areas.

The Democrats will support the Bill. It is generally a good Bill, but we have some amendments which we think will improve it. We have only one reservation about this legislation: not the law itself, but the willingness to provide the resources to look after the wilderness having proclaimed wilderness areas. The Democrats support second reading.

The Hon. PETER DUNN secured the adjournment of the debate.

WORKERS REHABILITATION AND COMPENSATION (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 4593.)

Clause 5—'Compensation for property damage.'

The Hon. L.H. DAVIS: I move:

Page 2, line 20—After 'motor vehicle' insert 'or any other form of transport'.

This really requires little explanation. We believe that we should cover other forms of transport. The words 'motor vehicle', in my view, do not necessarily include all forms of transport, such as bicycles. I think it is a sensible amendment, and I hope that the Committee will accept it.

The Hon. BARBARA WIESE: The Government opposes this amendment, which is much too wide. It could include anything, including property for which an individual should be privately insured. Therefore, it is the view of the Government that an amendment of this sort is not appropriate. Of course, if down the track it seems that there are some problems with this and that there ought to be a provision along these lines for some purpose or other, the Government would consider it, but at this stage it is considered to be an inappropriate amendment to the Bill.

The Hon. I. GILFILLAN: I oppose the amendment. There was some discussion of this matter in the select committee and, although it may have been worth looking at in a bit more detail, we did not come to a common mind, as I recall it, and I oppose the amendment.

Amendment negatived; clause passed.

Clause 6—'Weekly payments.'

The Hon. L.H. DAVIS: I move:

Page 2, after line 24—Insert new paragraphs as follows:

(ab) by striking out paragraphs *(a)* and *(b)* of subsection (1) and substituting the following paragraphs:

(a) if the period of incapacity for work does not exceed three months—

(i) the worker is, if totally incapacitated for work, entitled for the period of incapacity to weekly payments equal to the worker's notional weekly earnings;

(ii) the worker is, if partially incapacitated for work, entitled for the period of incapacity to weekly payments equal to the difference between the worker's notional weekly earnings and the weekly earnings that the worker is earning or could earn in suitable employment;

(b) if the period of incapacity for work exceeds three months but does not exceed one year, the worker is entitled to weekly payments determined in accordance with paragraph *(a)* for for the first three months of the period of incapacity and thereafter—

(i) the worker is, if totally incapacitated for work, entitled for the period of incapacity to weekly payments equal to 85 per cent of the worker's notional weekly earnings;

(ii) the worker is, if partially incapacitated for work, entitled for the period of incapacity to weekly payments equal to 85 per cent of the difference between the worker's notional weekly earnings and the weekly earnings that the worker is earning or could earn in suitable employment;

and

(c) if the period of incapacity for work exceeds one year, the worker is entitled to weekly payments determined in accordance with paragraphs *(a)* and *(b)* for the first year of the period of incapacity and thereafter—

(i) the worker is, if totally incapacitated for work, entitled for the period of incapacity for work to weekly payments equal to 75 per cent of the worker's notional weekly earnings;

(ii) the worker is, if partially incapacitated for work, entitled for the period of incapacity to weekly payments equal to 75 per cent of the difference between the worker's notional weekly earnings and the weekly earnings that the worker is earning or could earn in suitable employment.;

There are two separate matters to be dealt with under clause 6. Members will notice that there are two schedules of amendments on file. In the main body of amendments, the first one and a half pages of the amendment to this clause (page 2, after line 24) relate to the reduction of benefit levels, and I will be proceeding with that matter. The second part (paragrpah *(ac)* onwards), relates to the James case, and the Liberal Party amendment seeks to overcome the defects of that case. That also is reflected in the second set of amendments on file.

For the convenience of the Committee I suggest that we debate the Liberal Party amendment on pages 4 and 5 of my schedule of amendments (paragraph *(ab)*) relating to the reduction in benefit levels. It will be sensible to discuss the benefit levels separately, because they are capable of being debated and amended irrespective of the views of the Committee on the James case legislation.

The Hon. I. GILFILLAN: I move:

Page 2, after line 24—Insert new paragraphs as follows:

(ab) by striking out from subparagraph (ii) of paragraph *(b)* of subsection (1) 'that the worker has a reasonable prospect of obtaining';

(ac) by striking out subsection (2) and substituting the following subsection:

(2) For the purposes of subsection (1)—

(a) the following factors will be considered, and given such weight as may be fair and reasonable, in assessing what employment is suitable for a partially incapacitated worker:

(i) the nature and extent of the worker's disability;

(ii) the worker's age, level of education and skills;
(iii) the worker's experience in employment;
and
(iv) the worker's ability to adapt to new employment;

(b) until the period of incapacity for work extends beyond a period of two years, a partially incapacitated worker will be taken to be totally incapacitated unless the corporation establishes that suitable employment for which the worker is fit is reasonably available to the worker;
and

(c) if the period of incapacity for work extends beyond a period of two years, an assessment of what a partially incapacitated worker could earn in suitable employment after the end of the second year of incapacity will be made on the basis that such employment is available to the worker except where the worker establishes—
(i) that the worker is in effect unemployable because employment of the relevant kind is not commonly available for a person in the worker's circumstances (irrespective of the state of the labour market);
(ii) that the worker has been actively seeking, and continues actively to seek, employment;
and
(iii) that the worker has participated and (where applicable) continues to participate, to a reasonable extent, in appropriate rehabilitation programs provided for the benefit of the worker,
in which case the worker will be taken to be totally incapacitated unless the Corporation establishes that suitable employment for which the worker is fit is reasonably available to the worker.;.[1]

I have no intention of debating the benefit levels. I have made it plain that I am interested only in supporting amendments which mirror the select committee Bill, and there was absolutely nothing in that which moved to alter the benefit levels. I have also said that, totally separate from that, I believe that the other steps which have been taken in amending the Bill and implementing WorkCover are potentially capable of reducing the unfunded liability and the cost of WorkCover and therefore, through that, the levies paid by employers without reducing benefits as spelt out in the Bill. So, I will not be drawn into a debate on that matter, and I make quite plain that I will not be supporting any amendments that deal with any alteration to the benefits. I stick to my line that I will support only amendments that mirror the select committee's Bill.

My amendment is an attempt to deal with the perceived problem which gave rise in the first instance to the eventual Supreme Court judgment. We in the select committee had the task of compiling in consultation with Parliamentary Counsel the amendment that would establish the status quo as we understood it. Paragraph (iii) is commonly known as the 'odd lot', and it is a provisional circumstance to cover the person who, by nature of their previous employment and situation, is unlikely to find employment of a similar type. This clause is there to cater for that. There is an argument that the Supreme Court judgment would require a qualifying comment to the extent of 'no other' being applied to the criteria that are listed in paragraph *(ac)*.

I do not intend to move or to support the inclusion of those words, because they have not been properly assessed by the select committee and also because I am not convinced that it is legislatively necessary to include them. As members will note, I am moving an agreed amendment substantially to overcome the open-ended nature that the select committee—which included members of the Government, the Opposition and the Australian Democrats—all felt was a threat to WorkCover's viability from the earlier determination by Judge Mullighan—which actually stirred up the process.

So, in support of my amendment, I have some comments that were provided to me by WorkCover Corporation. They are notes on the major issues of concern to the corporation between the Bill passed by the House of Assembly and the select committee Bill. I will quote from that document where appropriate. I repeat that this amendment is that which came through with the select committee Bill. In relation to section 35, and the second year review, the corporation states:

> The corporation's view on this position will be clarified tomorrow [Wednesday 15 April 1992] following an analysis of the Supreme Court decision to be handed down tomorrow. If the decision does not support the position taken by the corporation then the amendment in the select committee Bill is preferred (subject to any minor changes that may be found necessary by the Supreme Court decision).

I indicate to the Committee that I will oppose the amendments moved by the Hon. Legh Davis and will seek support for my own amendments.

The Hon. BARBARA WIESE: I will address the issues that have been raised by the Hon. Mr Davis and the Hon. Mr Gilfillan. Before we vote, I would like to seek clarification on the intention of the Committee.

The CHAIRMAN: Both Mr Gilfillan and Mr Davis have moved a new paragraph *(ab)*, and the Committee will deal with those two amendments first. The Hon. Mr Gilfillan has moved a new paragraph *(ac)*, with which we will deal after that.

The Hon. BARBARA WIESE: I indicate on behalf of the Government that we will oppose both amendments. The first amendment, which deals with the amounts of money to be paid to workers, is considered by the Government to be quite inappropriate. The amendment would provide a level of weekly payments of 100 per cent of average weekly earnings for three months, 85 per cent for the next nine months and 75 per cent after 12 months. After two years most partially incapacitated workers' payments would be reduced to 75 per cent of the difference between their average weekly earnings and what they could earn in suitable employment that is effectively deemed to be available.

The amendment is aimed at reducing the cost of workers compensation for employers. The real way of achieving savings in workers compensation is for employers to take action to prevent workplace injury and deaths, to assist in returning injured workers to the workplace by cooperating with rehabilitation and by making suitable work available. To reduce the cost of workers compensation in this way would have a detrimental effect on the current incentive for an employer to lift its occupational health and safety performance.

The Government feels that the steps being suggested by the Hon. Mr Davis are extraordinarily harsh, particularly when one considers that many of the workers to whom we are referring are receiving workers compensation at this time and in many cases are receiving less than the average weekly wage. It would be extraordinarily harsh if they had to cope with the sort of rates that the honourable member is promoting, especially when one considers that it is not in any case an appropriate way to reduce the cost of workers compensation.

The second matter raised by both the Hon. Mr Davis and the Hon. Mr Gilfillan relates essentially to a Supreme Court decision of 15 April this year in the matter of *WorkCover Corporation v James* which has very much complicated the resolution of the second year review test. In the light of this recent decision, the Government believes that the amendment to the second year review test requires careful consideration. Accordingly, it is opposed to making any changes to the Act in this area at this time. I indicate that the Government will oppose both amendments that are being moved this afternoon.

The Hon. L.H. DAVIS: Obviously we have ended up debating two totally separate concepts which I expressed at the outset was not my wish. I thought it would have been less messy for the Committee to address the matter of benefit levels and then proceed to address the matter of the second year review. Be that as it may, let us proceed on all fronts. Let me put into some perspective the benefit levels in South Australia. We have the most generous workers compensation scheme in Australia, with 100 per cent benefit for the first 12 months. There are no ifs and buts about that proposition. If we are to have a scheme which is comparable with other States, we must accept that we should be looking at what other States do. A degree of unreality continues in the Labor Party, notwithstanding the fact that the South Australian economy is travelling more roughly than that of any other State in Australia. I repeat for the benefit of members opposite that benefit levels here at 100 per cent for 12 months are not a positive encouragement to return to work. They are out of line with all other States, and the question—

Members interjecting:

The Hon. L.H. DAVIS: Members opposite say that other States should be increasing their benefit levels for 12 months to 100 per cent.

Members interjecting:

The CHAIRMAN: Order!

The Hon. L.H. DAVIS: Go and talk to the Labor Premier of Victoria, Mrs Kirner, who has actually sliced her benefit levels back even further than those which are being proposed here. I suspect that if we looked at the Hon. Mr Gilfillan's proposal in the original debate in 1986-87 we would find that the benefit levels that were being proposed at that time were not far out of line with what we are talking about today.

If we reduce to 85 per cent the first benefit level after three months, as was proposed initially by the Liberal Party amendment, I accept that that may persuade unions to be involved in make-up pay negotiations, which is not uncommon in other States. In the spirit of compromise, I looked at what has been debated in other States and here previously and said that, on the floor, I would be happy to accept an amendment of 90 per cent. The Liberal Party has been consistent on WorkCover from its inception, and that cannot be said of any other Party in South Australia. If we reduce it to 85 per cent for the period from three months to 12 months, and from 80 per cent to 75 per cent thereafter, we will shave .15 per cent off the levy rate, assuming a levy rate of 3.5 per cent. That is the calculation given to me by WorkCover. Taking that into account with overtime payments, which have already been rejected in the House, those three things combined were reducing levy rates by about 10 per cent.

If we are to help business in this State, we must look at all aspects of the workers compensation scheme. The Government has been quite unwilling to grasp the nettle, leaving the running to the Liberal Party and, to a lesser extent, the Australian Democrats who, to give them credit, are at least backing the select committee's recommendations, and that is more than can be said about this wimpish, weak, leaderless, lacklustre Bannon Government. That is the first proposition: that the benefit levels should be reduced to bring them into line with other States.

The Government will not get up and try to suggest that this Liberal Party is uncaring, harsh, unconscionable and does not have a human face, because I would argue very strongly that these benefit levels are no more nor less than would obtain in other States, so these are reasonable amendments. They have been carefully discussed with employer groups. We have taken the interest to examine benefit levels in other States, and these are not unreasonable. It is the Government that is being most unreasonable in refusing to accept that, if we are to have a competitive workers compensation scheme, we must examine every aspect of the legislation.

So, I suggest, in the interests of keeping this debate as clean and as simple as possible, that the amendment on benefit levels (clause 6 *(ab)*) be put separately to the vote, because it is quite a separate matter from the aspects of the second year review which the Hon. Mr Gilfillan, the honourable Minister and I wish to address.

The Hon. L.H. Davis's amendment negatived.

The Hon. I. Gilfillan's amendment carried.

The Hon. L.H. DAVIS: I do not think there is any point in my proceeding with the second part of this amendment, because the Hon. Mr Gilfillan has already indicated that he will not support the proposal. These amendments are consequential on our earlier debate regarding the second year review in clause 2a. Therefore, there is little point in my proceeding with the remainder of this amendment.

However, I do want to say that, whilst I support the select committee proposal as a second best option, it has to be seen very much as a second best option. It does not go anywhere near covering the problems that have been created by the decision in James. The amendment included in the select committee Bill is no longer satisfactory because of what Justice Zelling said in *Carter v. Hall* and also because of what all three judges in the James case concluded about suitable employment.

The Hon. Ian Gilfillan is being driven by the best of motives. He has said, 'I am going to support what was agreed to by the select committee,' but the simple fact is that events have overtaken the select committee's recommendation on the second year review.

The Hon. I. Gilfillan interjecting:

The Hon. L.H. DAVIS: That is right. So, what we voted for is a three-legged dog going the wrong way.

The Hon. T.G. Roberts: Is that the Liberal Party's mascot?

The Hon. L.H. DAVIS: I do not know about that, but I am more likely to be facing the three-legged dog going the wrong way even as I speak. The fact is that time has passed by the select committee's recommendation. The Liberal Party supports it simply because it is better to have something than nothing. That is the only reason I support it. I am appalled, as I said this morning, that this Government, with its resources and with the recognition by WorkCover that the second year review can jeopardise it in a very dramatic fashion, has failed to take the initiative to draft its own amendment. That tells me how much the trade union movement has control in the Labor Party.

I am appalled to think that in the 15 days since the decision in the James case was brought down the Government has done nothing legislatively to fix the problem. It has been left to the Liberal Party and, to a lesser extent, the Australian Democrats to drag the issue into the Parliament. The Bannon Government is relying in typical cow-

ardly fashion on some form of amendment to be brought in by the Democrats. It is about time that the Government did its own dirty work, showed some leadership and some impartiality instead of just cuddling up with its union mates. It says something to me about the leadership of Premier Bannon, who is supposed to be standing up for business. Just think of that wonderful slogan that we heard in 1982 when John Bannon first became Premier—'We want South Australia to win.' Where are we winning at the moment? The Crows win the odd match, but that is about it. The economy is getting taken to the cleaners at every turn.

Members interjecting:

The CHAIRMAN: Order!

The Hon. L.H. DAVIS: Look at the inflation rate published yesterday. It is certainly down nationwide, but look at the inflation rate and the unemployment rate in South Australia. Whilst the Liberals support the Democrats in at least bringing into this Chamber the second year review amendment of the select committee, it is a hollow victory, because it has loopholes in it that can be quickly exposed in the light of the judgment in James and of Zelling's decision in *Carter v. Hall.* There is no question about that. It is an effective amendment. Whilst it may paper over the cracks and get the Government off the hook with the employers, it is not a satisfactory solution. That solution was provided by the Liberal Party in its amendment which, sadly, has been defeated, and the cost will be borne not by the employers alone but also by the workers in South Australia. The Labor Party is very slow to recognise that fact. It disappoints me. I would have thought it would know by now that unless you generate profits you will not create jobs.

The Hon. I. GILFILLAN: I believe my amendments are substantial and satisfactory. Although there is concern about Justice Zelling's remarks, particularly in the Supreme Court appeal, which have not been substantiated with independent legal corroboration, I believe that my amendment is an effective one based on what was the concern in the Mullighan judgment. Whilst not at this particular time because I think it is a little unfair to the Minister in charge, I believe that a challenge must be thrown out to the Government to say, if it is opposing these amendments and if it is successful, that it would be prepared to lose the Bill.

I would like to call its bluff on this matter. It gives me no joy to see it sheltering behind the bunker where it thinks it is dodging the arrows and the missiles from the union movement, but behind its bunker, gleefully smiling, it is saying, 'The others will get it through; we won't have to worry; we will get into a conference when all the doors are shut and there will be very little resistance at all, we can assure you of that.' It would give me a lot more satisfaction if it were possible for us to throw down the gauntlet to the Government to come up front and say, 'We are so opposed to these amendments that if you insist on them we will take out the Bill.' If not, let it come up front right now and say, 'Yes, we recognise these steps are necessary; we are not playing hypocritical games deceiving the union movement and the rest of South Australia; we are prepared to be honest about it even if we do get some flack.'

I would like the Government to show its hand and not go on playing games. I have been steadfast in the undertaking that I gave before this matter was introduced into this Chamber. The select committee has done and continues to do a good job, and I will continue to support its recommendations. That is why I think my amendments are worthy of support.

The Hon. BARBARA WIESE: As the honourable member has indicated, I am here by chance. I am a caretaker Minister looking after the Bill at this time. The Attorney-General is the Minister responsible for handling this Bill in this place, so I am at something of a disadvantage in debating the issues with members who have had the opportunity to study the specific clauses. However, I want to make one general point: the Hon. Mr Gilfillan is not being entirely fair to the Government—whoever is sitting in this chair at the moment—in raising the issues that he has raised, because he knows full well what happens when there is a contentious Bill, whatever it might happen to be, whether it is about workers compensation or wheat marketing. If it is a controversial Bill upon which numerous amendments are being moved across a range of issues, then what the Government's position at the end of the day will be is not something that usually will or can be declared half way through the process.

The point I am making is that the parliamentary process itself is here to determine outcomes. The Bill that has been introduced by the Government is likely to come out of this place in a very different shape. It will be a matter for the Lower House, for the Minister responsible for this piece of legislation and for the Government to determine where they stand on these issues once we know how this Bill comes out of the Parliament.

Therefore, these matters will be decisions that will be taken at the appropriate time. Now is not the appropriate time, but I have indicated that the Government believes that the recent court decision is very complicated and requires further study before any consideration is given to any legislative change at all. Members opposite might want to introduce amendments on the run; the Government does not want to play with legislation in that way. We believe these issues should be studied and proper decisions taken with respect to major questions.

The Hon. L.H. DAVIS: I want to reiterate what I said this morning: the Government made a promise to employer groups two days ago through the Premier at a meeting where the Premier was confronted with the three employer groups expressing concern about WorkCover. The Premier said he expected the second year review to be considered in this current session of Parliament, yet we have just witnessed a spectacle where the Government opposed at every turn the proposal of the Hon. Ian Gilfillan, which was the select committee recommendation, after all, that the Hon. Terry Roberts in this place and the Minister of Labour, the Hon. Bob Gregory in another place, endorsed.

In fact, Bob Gregory signed and tabled that report, yet the Government has the gall to tell the employer groups that it will see the second year review through the Parliament and that it will fix it. It has not fixed it; it has opposed it at every turn. It has not only opposed the select committee amendment which as I have said on legal advice is a defective piece of legislation—a defective amendment, because it has been overturned by the James case decision—but it has ignored totally the proposal by the Liberal Party which has been drafted by Parliamentary Counsel and which has taken into account the decision in James. Also, that drafting has run the gauntlet of some of the best commercial lawyers in town.

I want to put that on the record. This morning we threw down the gauntlet to members of the Government. They had the lunch break and a chance to consult with the Premier and see what the Government is doing for business. They made the promise to the three employer groups on 28 April and they have come back six hours later with the opportunity to repent and what have they done? They have done nothing. The Bannon Government is anti-business; it is a disgrace and should not be in Government.

Clause as amended passed.

Clause 7—'Discontinuance of weekly benefits.'

The Hon. L.H. DAVIS: I move:

Page 3, lines 6 to 12—

Leave out subsection (4b) and substitute:

(4b) A Review Officer cannot make an order under subsection (4a) if—

(a) the adjournment is at the request of the worker (or his or her representative);

or

(b) the adjournment is required because a Review Officer has insufficient time to proceed with, or to conclude, the hearing at that time.

This relates to discontinuance of weekly payments. The employer groups, as I explained in my second reading, have been critical of the delays in the proceedings by employees' review officers at a time when compensation is being paid by WorkCover or exempt employers and, whilst the select committee has accepted that the review process is an important area for discussion, we have not really examined it in any detail as yet. The review process, as we know, is independent of WorkCover; therefore, it would seem to me that it is much more appropriate to have legislative guidelines regarding weekly payments rather than leaving it to the review officers' discretion. So, what this amendment does is to address some of the concerns of the employer's groups about the discontinuance of weekly payments. The insertion of a new (4b) instead of the proposed (4b) and (4c) is to ensure that the appropriate incentives and disincentives are in legislation so that employees and review officers do not unduly delay proceedings. So, I am speaking to employees and review officers should not be allowed to unduly delay proceedings at a time when the compensation is continuing to be paid by the exempt employers or the WorkCover Corporation, in the case of insured employers. This amendment to lines 6 to 12 on page 3 will prevent the corporation and employers from being disadvantaged or prejudiced by tardy review officers.

The Hon. BARBARA WIESE: The Government opposes this amendment. It seeks to restrict the discretion of review officers to issue an order to maintain a worker on benefits pending the resolution of a review. Review officers should have the flexibility to hear arguments from all parties on the necessity of an adjournment and make an assessment on whether there are grounds to justify the continued payment of benefits.

Amendment negatived.

The Hon. L.H. DAVIS: I move:

Page 3, line 22—Leave out 'future'.

The Hon. BARBARA WIESE: The Government accepts the amendment.

Amendment carried; clause as amended passed.

[*Sitting suspended from 5.57 to 7.45 p.m.*]

New clause 7a—'Suspension of weekly payments.'

The Hon. I. GILFILLAN: I move:

Page 3, after line 27—Insert new clause as follows:

7a. Section 37 of the principal Act is amended by striking out from paragraph *(a)* of subsection (3) 'stating the ground' and substituting 'containing such information as the regulations may require as to the grounds'.

This is a requirement that technical information is to be provided to the corporation when a corporation is making a decision regarding suspension of weekly payments. This is a move to expedite the proceedings so that, through the regulations, there can be a requirement that all relevant information would have to be provided at this particular stage of the debate on the issue of suspension of weekly payments.

The Hon. C.J. SUMNER: This new clause is acceptable.

New clause inserted.

Clause 8—'Economic adjustment to weekly payments.'

The Hon. L.H. DAVIS: I move:

Page 3—

Line 29—After 'amended' insert—

(a)

After line 30—Insert—

and

(b) by striking out paragraph *(a)* of subsection (3) and substituting the following paragraph:

(a) containing such information as the regulations may require as to the grounds on which the adjustment is being made;.

The Hon. I. GILFILLAN: I support the amendments, which relate to the reasons and grounds for decisions. The corporation suggested to the select committee that section 36, which concerns notices to discontinue or reduce weekly payments, should be regulated in some way so to avoid legal argument on the technicalities of the notices and to avoid the inconsistent review and tribunal decisions on this issue. While section 36 notices were the major concern of the corporation, Parliamentary Counsel suggested that, for consistency, all other notices, where grounds or reasons for decisions are to be given, should be similarly regulated.

The select committee Bill, which endorses both the Hon. Legh Davis's and my amendments, included these consequential changes in the amendments that flow from it. For the information of the Committee, that includes the current amendments and amendments to clause 9 and clause 12 (which, if passed, will become new clause 10a and new clause 11a). I indicate that they are connected because it may later facilitate debate on these amendments. I support the Hon. Legh Davis's amendments.

The Hon. C.J. SUMNER: The amendments are acceptable.

Amendments carried; clause as amended passed.

New clause 8a—'Weekly payments and leave entitlements.'

The Hon. L.H. DAVIS: I move:

Page 3, after line 30—Insert new clause as follows:

8a. Section 40 of the principal Act is amended—

(a) by striking out from subsection (1) 'Subject to subsection (3)' and substituting 'Subject to this section';

and

(b) by inserting after subsection (4) the following subsection:

(4a) A worker's entitlement to weekly payments in respect of a period of incapacity for work will be reduced to the extent that the worker receives a payment, allowance to benefit for annual leave under a law of the Commonwealth in respect of the same period.

This provision seeks to amend the section of the principal Act relating to leave entitlements by preventing double payment of annual leave under Federal awards in the case of rostered days off.

The Hon. C.J. SUMNER: At this stage the Government opposes this amendment. The perceived problem of double dipping by workers arises when an employer is compelled by an award to pay annual leave to a worker for a particular period, for example, for the Christmas shutdown, regardless of the fact that the worker is injured and entitled to income maintenance for the same period. This amendment seeks to eliminate that anomaly. Verbal advice from the Department of Labour is that many State awards contain provisions for plant closures with the accompanying payment of leave entitlements to workers. This being the case, it would be inequitable for the amendment to apply only to workers under a Federal award, as double dipping is just as likely to occur under a State award.

The amendment proposes to reduce weekly payments. Reductions under the principal Act require that notice be

given to workers. A suspension of weekly payments would be more in keeping with the intention of the amendment. Further consideration needs to be given to an amendment that would address these concerns, and the Government acknowledges that. At this stage it believe that this has not been sufficiently worked through or considered to be supported. Accordingly, the Government opposes the amendment.

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

The Hon. L.H. DAVIS: Again, we have another example where the Government, with its resources, has been unable and, I suspect, unwilling to countenance a reasonable suggestion. For a change, the Attorney has at least acknowledged that there is a germ of merit in the Liberal Party's proposal. I remain disappointed that this Government is not only rejecting all select committee recommendations but also other recommendations of the Liberal Party which have been on file for a few days and which are designed to bring the workers compensation scheme into a competitive position with other States.

New clause negatived.

Clause 9—'Insertion of new Division.'

The Hon. L.H. DAVIS: I move:

Page 4, line 2—Leave out 'that the worker has a reasonable prospect of obtaining'.

As the Hon. Ian Gilfillan has already noted, this amendment is a recommendation of the select committee, which was supported by Government members.

The Hon. C.J. SUMNER: The Government opposes the amendment.

Amendment carried.

The Hon. L.H. DAVIS: I move:

Page 4—
Line 21—Leave out 'and'.
After line 28—Insert—

and

(d) employment assessed as suitable under paragraph *(c)* will be taken to be available to a partially incapacitated worker except where the worker establishes that the worker is in effect unemployable because employment of the relevant kind is not commonly available for a person in the worker's circumstances (irrespective of the state of the labour market), in which case the worker will be taken to be totally incapacitated for the period to which the assessment relates unless the corporation establishes that suitable employment for which the worker is fit is, or will be, reasonably available to the worker over that period.

Again, these amendments are part of the select committee package.

The Hon. I. GILFILLAN: The amendments deal with loss of earning capacity and second year review lump sums. I have received from the WorkCover Corporation some comments which I think are relevant to the discussion. WorkCover's comments are:

There are two major concerns in this clause—

that is, the clause as it is in the Bill—

Firstly, the Government's Bill as amended in the House of Assembly includes the current second year review type wording from section 35. Secondly, the House of Assembly Bill contains the amendment moved by the Hon. Terry Groom in another place, which makes the decision of the corporation to transfer a worker from weekly payments to the lump sum compensation under this division a reviewable decision.

We refer also to clause 13 of the House of Assembly's Bill amending section 95 of the Act. The corporation's concerns with the second year review wording will be clarified after the Supreme Court decision.

That was its expectation. WorkCover's comments continue:

The second issue of the review of the decision is now inconsistent with the select committee Bill, proposed section 42a (10), which gives the corporation the discretion as to whether or not to make an assessment under this division, and that decision is not reviewable. The corporation prefers the select committee Bill in this regard in that it keeps control of the use of this lump sum provision within the corporation.

It was argued—I think persuasively—in the select committee that the discreet and varied use of the lump sum capacity would be of great advantage to injured workers and to WorkCover. I believe one desirable end result of prime importance is the ability for those injured workers who are not able to secure a job for their employable capacity to be able to apply for and get unemployment benefits. As members will recall, I have argued consistently that it is the Federal Government's responsibility to carry the funding of any unemployment factor past the second year review of the injured worker's condition. This is quite a significant amendment, and I am confident it will improve the general workability of the Act.

The Hon. L.H. DAVIS: As my colleague the Hon. Ian Gilfillan has stated, this matter received close attention in the select committee. The attractive feature about the proposal is that it will result in savings not only to WorkCover but also to workers, because it provides for WorkCover, in the case where a worker has been incapacitated for two years, to assess as a capital loss any permanent loss of future earning capacity. WorkCover can then make the lump sum compensation, and that will not be taxable in the hands of the worker. I see no difficulty with the morality of that situation. It is a legitimate amendment and it had widespread support from employer groups, and certainly unanimous support from the select committee. The other feature of this provision is that the compensation can be paid as a lump sum or by instalments. There is some flexibility in that matter.

The Hon. C.J. SUMNER: It is opposed by the Government.

The Hon. L.H. DAVIS: I know that the Attorney-General is just a bit-player in this important debate and that workers compensation is not his special field.

The Hon. C.J. Sumner: It actually was.

The Hon. L.H. DAVIS: That is even better then. The Attorney-General says it was his special field. So, he claims to have some expertise in the matter.

The Hon. C.J. Sumner: Under the old system.

The Hon. L.H. DAVIS: The Attorney says he was an expert under the old system. It seems that perhaps he should really still be an expert, because nothing much has changed in recent years. I ask the Attorney, on the record, why certain undertakings were given by the Premier—

The Hon. C.J. Sumner interjecting:

The Hon. L.H. DAVIS: I know, but we have proceeded down the road. Some eight hours have elapsed since the matter was first raised this morning. I should have thought that maybe the Attorney-General would be sufficiently concerned for the 55 000 businesses under WorkCover, with 96 per cent having 20 employees or less, to have made inquiries of the Premier to see exactly what the game plan of the Government is in relation to WorkCover. Although this debate has now been going on for some hours, it does not detract from the importance of the subject matter. I am not making a debating point—it is a point of fundamental importance to tens of thousands of small businesses. The Liberal Party, with support on some matters from the Australian Democrats, is endeavouring to remedy the iniquitous levy rates which are imposed on South Australian employers.

Having had a special meeting with three employer groups—the Chamber of Commerce, the Employers Federation and the Engineering Employers Association—the Government has offered no explanation, no reason and no

logic for its continuing and deafening silence on the amendments that have been proposed.

The Hon. R.R. Roberts: Get on with it!

The Hon. L.H. DAVIS: The Hon. Ron Roberts says, 'Get on with it.' Does he not care about these small businesses? Does he not care about the South Australian economy?

The Hon. R.R. Roberts interjecting:

The CHAIRMAN: Order!

The Hon. L.H. DAVIS: I would like an explanation from the Attorney, representing the Government, as to why this Government has no decent reason for rejecting logical amendments.

The Hon. C.J. SUMNER: That was a re-run of the issues that the honourable member raised—

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: No, I didn't have dinner with the Premier. I have been in the Council most of the time.

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: I suggest you ask him when the matter goes back to the other place, and I am sure he will give you an answer.

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: You could have the question asked in another place. You are perfectly entitled to do so. I was not present at the meeting with the employers that the Premier was at. I do not know whether the employers' press release reflects what the Premier said. I suggest that if you want an answer to that question you ask the Premier about it.

The Hon. L.H. Davis: I will.

The Hon. C.J. SUMNER: Fine. I am quite happy about that. It so happens that I was not at the meeting. I do not know whether the press release reflects the results of the meeting. I explained this morning the Government's approach to the two year review issues. I know that the honourable member is not happy with that explanation, but that is just something that he will have to contend with—the state of unhappiness. There is nothing further that I can say on the matter, although I have had some acquaintance with workers compensation matters in the past. The honourable member would know that the workers compensation legislation is within the jurisdiction and responsibility of the Minister of Labour, and obviously he has done the bulk of the work on this matter on the select committee and in negotiating with the concerned parties. I am his mouthpiece on the topic in the Council. I have explained to the honourable member the reasons that the Minister of Labour has given me for the Government's opposition to this set of amendments. The Hon. Mr Davis is not happy, but that is a state that he is quite familiar with, and I really cannot help him out.

The Hon. L.H. DAVIS: I was away at Question Time, but I heard that the Attorney was not too happy, either—15 all! I do not wish to proceed any further with the debate, but I would hope that the Attorney-General can convey the concerns of the Liberal Party to the Premier about this matter and I will take it up with him myself.

Amendment carried.

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

Page 5, after line 4—Insert—

(aa) a decision of the corporation to make an assessment under this section (but the actual assessment is reviewable);.

The amendment seeks to ensure that the decisions of the corporation to make or not to make an assessment of a lump sum under section 42a remains a matter that is at the absolute discretion of the corporation and cannot be subject to review. The Government is concerned to ensure that access to lump sums under section 42a does not become automatic. If access to lump sums were to become automatic, this would reintroduce the lump sum mentality of the old workmen's compensation system, where some workers held on to their symptoms in order to maximise their lump sums. In the Government's view the use of section 42a should be used judiciously by the corporation, where that is in the interests of all parties concerned.

The Hon. L.H. DAVIS: I indicate that the Liberal Party would be prepared to support the amendment if the Attorney was prepared to countenance an amendment to the amendment, to include the words 'or not to make' after the word 'make' in the first line of the amendment. Also, to leave out the words 'the actual' before 'assessment', in the bracketed part, and insert 'an'. Thus, the amendment would read:

. . . a decision of the corporation to make or not to make an assessment under this section (but an assessment is reviewable).

The Hon. C.J. SUMNER: That is all right.

The Hon. I. GILFILLAN: I indicate support for the amendment. I find it quite bemusing that the Government has chosen to move its own amendment in this matter. It is a significant amendment, one which fits very much into the spirit of the select committee and its approach to lump sum. It has been articulated quite well in the explanation that was just read by the Attorney-General who is representing, at least orally, the Government.

However, this stands very oddly askance to the Government's attitude to similar amendments moved by me which reflect the select committee's wishes, but the Government has not even deigned to consider that the select committee suggested these amendments. It has just brushed them off out of hand, yet it has the gall to move its own amendments and expect us to accept them without a grumble. Well, I am grumbling. However, for the ultimate good of WorkCover and workers compensation in South Australia I for one will not be so petty as to say that, because the Government introduced it and it was not one that I had thought about before, I will not consider or support it—

The Hon. L.H. Davis: And I did the same.

The Hon. I. GILFILLAN: —and neither has the gracious Mr Legh Davis who is renowned for his good nature. I could not let this situation go by without comparing, to the Government's disadvantage, the way in which this Committee has dealt with the amendments that have come before it. As I indicated before the dinner adjournment, I think it is to the lasting shame of the Government if it intends to hide behind its bunker and hope that certain amendments will be carried by the Opposition in conference, that there will be some comfortable and convenient way out and that the Government will actually get its cake but will not do anything about eating it in public.

I do not know what part the Attorney has played—I suspect, to his credit, none—in the Government's attitude to the amendments, particularly mine which are related specifically to the select committee Bill. I find absolutely inexcusable the disgraceful way the Government has reacted to this series of amendments. I realise that we are now on course and will follow it through to the end of the Committee stage, and one assumes there will be some rethinking elsewhere. However, I think it is a totally reprehensible way of dealing with this legislation. I will support the amendment because, as I say, I recognise that it follows the general thinking of the select committee and it will improve the legislation.

Amendment as amended carried.

The Hon. L.H. DAVIS: I move:

Page 5, lines 25 to 35—Leave out subsections (3), (4) and (5).

Section 42b deals with medical examinations. Quite clearly, a workers compensation system must provide for examination of workers by medical experts and must provide that the appropriate information about the worker's medical condition should be furnished to enable an assessment of the worker's entitlement. The Liberal Party does not believe that it is appropriate to subject such basic information gathering to a review by a review officer. There is no basis indicated on which the review is to be undertaken by the review officer, and the Liberal Party would argue that, in section 38 (5) of the principal Act, there is a similar requirement as that proposed under section 42b (1). That provision is not subject to these limitations. In other words, the Liberal Party is saying that these provisions are not necessary. We do not believe that the review officer should be reviewing this basic information. We very strongly oppose the subsections and seek their deletion.

The Hon. I. GILFILLAN: I move:

Page 5, line 34—Leave out 'future'.

My amendment is consequential on the previous amendment, and has nothing to do with the Hon. Legh Davis's amendment.

The Hon. C.J. SUMNER: The Government opposes the amendment of the Hon. Mr Davis. The Government proposal ensures that a review right is available to a worker if he believes that WorkCover has acted unreasonably in relation to directions relating to medical examinations and the submission of relevant information. The Government believes that there is reasonable protection for workers in the legislation and it should remain. We oppose the Hon. Mr Davis's amendment. I move:

Page 5, line 34—Leave out 'subsection (4)' and substitute 'subsections (4) or (4a)'.

My amendment is necessary to ensure that any appeal by a worker for directions issued under subsection (1) is made within a specified period and not left open-ended. I support the Hon. Mr Gilfillan's amendment.

The Hon. L.H. DAVIS: I oppose the Attorney's amendment. This is the only burst of enthusiasm we have seen from the Government all night. Ironically, it is on a matter that has not been dealt with in enormous detail by the select committee, yet here we have the Government exerting itself to the extent of 1½ pages of amendments, having not bothered to lift a finger for the other numerous pages of the Bill. The very fact that the Government has spent so much energy drafting this amendment makes me extremely suspicious. In my second reading contribution, I rejected this proposal. I do not think it is equitable and the Liberal Party does not support it; however, I want to indicate that the Liberal Party quite clearly does support the amendment of the Hon. Ian Gilfillan, because it follows a select committee recommendation. I just want to foreshadow that support.

The Hon. I. GILFILLAN: It looks as if my amendment is the most popular of the lot, which is a most enjoyable situation, but I think before the Hon. Legh Davis opposes this amendment out of hand I should point out that my understanding of it is that it imposes an obligation on the worker to make an application under this clause within a confined period of time; it is not an application that can suddenly appear out of the context of time. I see it as improving the situation from the point of view that applications will be made within a reasonable period of time. At a certain point of what had been a prescribed period of time, WorkCover can realise that from then on no application would be made. I intend to support the amendment.

The Hon. L.H. Davis: Oh, no; I don't believe it.

The Hon. I. GILFILLAN: Well, you don't understand it.

The Hon. L.H. Davis's amendment negatived; the Hon. C.J. Sumner's amendment carried; the Hon. I. Gilfillan's amendment carried; clause as amended passed.

Clause 10 passed.

New clause 10a—'Review of weekly payments.'

The Hon. L.H. DAVIS: I move:

Page 5, after line 43—Insert new clause as follows:

10a. Section 45 of the principal Act is amended by striking out from paragraph *(a)* of subsection (7) 'stating the ground' and substituting 'containing such information as the regulations may require as to the grounds'.

This is consequential and the same explanation applies to this as applied to previous discussion.

The Hon. C.J. SUMNER: Acceptable.

New clause inserted.

Clause 11—'Incidence of liability.'

The Hon. L.H. DAVIS: The Liberal Party opposes this clause outright. It has no redeeming features in our view. The clause is an enormous burden on small and medium employers because the amendment proposed by the Government requires employers to pay workers compensation on behalf of WorkCover to entitled workers. One can immediately envisage a situation of an employer employing one, two or a handful of people. He might have an accident with one employee and be required by the corporation to pay compensation to that employee.

The power given to WorkCover is quite horrendous. Under clause 11 the corporation can notify an employer that a worker entitled to compensation must be paid the appropriate compensation by that employer on behalf of the corporation. Clause 11 goes on to state that, if the corporation does not reimburse the employer within a reasonable time, the employer is entitled to interest at a prescribed rate. That begs the question. We are talking about 96 per cent of the 56 000 employers under the WorkCover umbrella who have less than 20 employees. For a small business with only one or two employees, or even with a dozen or so, WorkCover has the power under clause 11 to demand that the employer pay compensation to the injured worker on behalf of WorkCover. The consequences are clearly horrendous. Let us think the issue through.

If John Doe has one employee and that employee is off for a period with a serious injury, he may face the expense not only of paying the entitlement required by WorkCover but of employing someone else to cover the injured worker. That expense might be considerable, because the injured worker might have been very well experienced and John Doe might need to employ more than one person to compensate for his absence.

We also have the obvious problem—obvious even to the Attorney-General, who has not been involved in workers compensation for some years—that cash flow is critical in a small business. If we have a situation as set out in clause 11, I fear for small business in South Australia. It is not only the disadvantage faced by small business in this regard: it is the enormous advantage that WorkCover gains in terms of its cash flow. If it pays the employer with a few days grace—it can be left for a week or two weeks—obviously it has had the benefit, enjoyment and use of that money to the disadvantage of the small employer. This is woolly thinking and it is unacceptable. It is anti-business.

Nothing that I have heard from any employer groups satisfies me that this amendment has even one redeeming feature. The only argument that can be advanced in its favour, in my view, is that it retains the nexus between the employer and his injured worker. That is a commendable proposition, but if that is the purpose or intent of the amendment, surely it would be better for WorkCover to have a conduit through the employer to the employee, the

cheque being made payable to the employee on a not negotiable basis to protect the interests of the employee. I hope that the Australian Democrats will see how anti-business this amendment is and will oppose it for all it is worth.

The Hon. J.F. STEFANI: My business experience in this matter is clear: WorkCover is very tardy in reimbursing payments to employers. My experience is that it can take as long as two months for the employer to be reimbursed for the payments that he has made in good faith to the employee. Assistance is given to the injured worker, but WorkCover has no compunction about delaying payments, for whatever reasons, so that the reimbursement to the employer is very much delayed. As I said, my experience has been that it can take up to two months and sometimes longer.

WorkCover also has a very heavy-handed attitude about the collection of fees. There are draconian penalties if an employer remits the levy fees a few days late. The explanation that is given is that the employees would remain uninsured. We have the situation where WorkCover adopts draconian measures in terms of penalties for late payment by employers, yet when it applies its own rules it is not prepared to be penalised in line with the same penalties it applies to employers. I strongly support the position of the Liberal Party. It is an obligation on the insurer, in this case WorkCover, which has taken the risk to insure people and, when payments of levies are made, it is up to the insurer to ensure that payments are made to injured workers.

The Hon. I. GILFILLAN: I support the clause. There is one aspect of WorkCover that is envisaged, and it should work, that is, to keep the nexus between the employer and the injured worker. It is one of the major advances of the exempt category. Although it will not always work to the optimum advantage every time, it is important to hang on to the basic principle, which I do not think has been argued against and, in fact, was endorsed by the Hon. Mr Davis when he commented on the clause.

There is an advantage that the actual employer's cheque goes directly to the injured worker rather than some other entity's cheque, which then becomes detached and becomes depersonalised from the employer/employee connection. That is a valuable connection to retain if we are hopeful, as I am, that in many cases rehabilitation and return to the work place will be facilitated by a continuing bond between employer and employee.

There is absolutely no excuse for WorkCover not compensating the employer speedily, and our duties as legislators must be to put in place legislation which compels WorkCover to do that. If there is shown to be default, there must be punitive costs on WorkCover with a benefit going to the employer who has been left uncompensated. It may be that, when the committee looks at these matters further, and certainly in my mind, there is an argument for an Ombudsman to be involved with WorkCover.

It is an idea that has certainly not been canvassed widely in any discussions I have had either in the committee or without. My support for the clause is that I think it is a pity to put at risk what is an important aspect of the way WorkCover should be working. Likewise, we have an obligation to ensure in every possible way that the system works as it is intended. It is intended that no employer should have to wait more than a reasonable time and suffer no economic loss for making those payments. If that is not complied with, we should ensure through our legislation that WorkCover actually carries a penalty, which then flows on to the employer.

The Hon. C.J. SUMNER: The Government supports the clause for the reasons expressed by the Hon. Mr Gilfillan.

Clause passed.

New clause 11a—'Determination of claim.'

The Hon. L.H. DAVIS: I move:

Page 6, after line 30—Insert new clause as follows:

11a. Section 53 of the principal Act is amended by striking out paragraph *(a)* of subsection (6) and substituting the following paragraph:

(a) containing such information as the regulations may require as to the grounds on which the claim is rejected;.

This is consequential on previous amendments. In fact, as I understand it, one of the reasons for this being inserted is to overcome the problems that will be created by court decisions.

New clause inserted.

New clause 11b—'Continuation of employment.'

The Hon. L.H. DAVIS: I move:

Page 6, after line 30—Insert new clause as follows:

11b. Section 58b of the principal Act is amended by inserting after paragraph *(a)* of subsection (2) the following paragraphs:

(ab) the worker was employed on a casual basis at the time of the occurrence of the disability;

(ac) the worker was employed for a fixed term and that term has expired;.

This clause amends section 58b of the principal Act and relates to the continuation of employment where a person has been incapacitated for work in consequence of a compensable disability and is able to return to work. We are seeking to add two paragraphs to subsection (2), and they are exemptions. The principal Act states that this subsection does not apply if:

It is not reasonably practicable to provide employment in accordance with that subsection (and the onus of establishing that lies in any legal proceedings on the employer) or the worker left the employment of that employer before the commencement of the incapacity for the work.

The Hon. C.J. SUMNER: The Government opposes this amendment. It is critical for a worker's rehabilitation that the employment relationship be continued where it is practicable to do so.

The Hon. I. Gilfillan: You might be on the wrong amendment.

The Hon. C.J. SUMNER: This is new clause 11b. I will start again. This amendment seeks to exempt employers of casual labour and fixed term contract labour from the operation of section 58b, which requires the employer to provide work to an injured worker wherever that is practicable. I then went on to add my own words because I assumed that honourable members would have understood that point, that that is what the amendment did. Obviously my assumption was ill-founded and in future, Mr Chairman, I will repeat what the amendment does as well as put my own comments. I hoped that the honourable member had known what the Hon. Mr Davis said about the amendment. I was only trying to cut down time in putting my response to it. I then went on to say, 'It is critical for a worker's rehabilitation that the employment relationship be continued where it is practicable to do so.'

The Hon. I. GILFILLAN: It is a brilliant sentence, but I am not sure how it links to the amendment. The Act contains a paragraph *(b)* which reads as follows:

The worker left the employment of that employer before the commencement of the incapacity for work.

To me that seems to cover paragraph *(ac)* which the Hon. Legh Davis has moved, at least in effect anyway, because the employee would no longer be employed. So, that is just duplicating it. The other may well have justification. I apologise to the Hon. Legh Davis; it might be an intelligent amendment, but as he knows I have maintained my stand in this respect and it has not been considered by the select committee. I hope that we have a chance to review this.

When the Minister in charge actually gives me the explanation for the previous amendment and then does some very adroit verbal footwork—

The Hon. C.J. Sumner: It's not true.

The Hon. I. GILFILLAN: It has to be pretty close to true.

The Hon. C.J. Sumner: Well, I'm sorry. It's absolutely not true.

The Hon. I. GILFILLAN: How on earth can the Minister claim that this amendment attaches to the fact that it will keep the desirable nexus between the employer and employee? That is poetic licence.

The Hon. C.J. Sumner: I didn't say that. I said that the employment relationship would be continued.

The Hon. I. GILFILLAN: I will leave it to others to translate. It certainly has me baffled. Although I see that there are grounds for the select committee to look at this matter, at this stage, I oppose the new clause.

New clause negatived.

Clause 12—'Delegation to exempt employers.'

The Hon. L.H. DAVIS: I move:

Page 7, after line 10—Insert new subsection as follows:
(3aaa) Subsection (3aa) expires on 1 July 1993.

This clause relates to exempt employers who, as we know, account for about 35 per cent of the total work force. The amendment attempts to limit assessments by WorkCover Corporation that have been carried out by exempt employers. Initially I felt that there was no merit in subsection (3aa) which provides that an exempt employer must notify the corporation, in accordance with the regulations, of its intention to make an assessment and is subject to direction by the corporation as to how to exercise its powers and discretions under Division IVA in relation to workers, or a particular worker, of the employer.

I accept that it may take time for the exempt employers to become aware of the requirements under sections 42a and 42b, but I do not believe that that power should remain there forever. I do not think it is necessary. After talking with employer groups—and I must say that I did not include the exempt employers—the Liberal Party reached a compromise position and that was to sunset the clause and in that way require exempt employers to operate under that provision until 30 June 1993.

There is not an enormous number of exempt employers. Obviously those already there are familiar with the operations and those few who will become exempt employers in time will also know exactly what is required of them. This provision really contradicts the status that is given to exempt employers. Therefore, rather than being deleted immediately, this amendment should be phased out through the device of this sunset clause.

The Hon. C.J. SUMNER: The Government opposes the proposal. I will not repeat it, although my briefing notes contain a recitation of what the amendment is about. I merely give the Government's response. The Government is concerned that the new section 42 *(a)* provisions are not abused and that rehabilitation remains the prime focus of the Act. There is also a need to ensure that bargaining does not occur over the lump sum—similar to that which occurred under the old system where workers often traded away their rights to full and proper compensation.

Amendment negatived; clause passed.

New clause 12a.

The Hon. L.H. DAVIS: I move:

Page 7, after line 10—Insert new clause as follows:
12a. Section 65 of the principal Act is amended by striking out from subsection (1) the definition of 'remuneration' and substituting the following definition:

'remuneration' includes payments made to or for the benefit of a worker which by determination of the corporation constitute remuneration but does not include—

(a) any contribution paid or payable by an employer to a superannuation scheme for the benefit of a worker;

(b) any amount paid or payable to a worker as severance, retrenchment or redundancy pay on the termination of employment, except to the extent (if any) that the amount is attributable to unpaid wages, or to any annual leave or long service leave entitlement;

or

(c) any other amounts determined by the corporation not to constitute remuneration.

This provision seeks to amend the definition of 'remuneration' in the principal Act. The Liberal Party specifically looks to correct the anomaly which we believe exists and which requires the present definition of 'remuneration' to include contributions paid by an employer to a superannuation scheme for the benefit of a worker and also the amount paid to a worker as severance, retrenchment or redundancy pay on the termination of employment. The removal of superannuation from the definition of 'aggregate remuneration' can be justified. I might be wrong, but I think South Australia is the only State where superannuation is included in the definition of 'aggregate remuneration'. At a time when we are looking to reform WorkCover and, particularly, when the superannuation guarantee levy is being introduced, it is appropriate to look to make this change.

The other point that has to be made is that we have had a bizarre situation over the past two years, particularly as unemployment has increased, retrenchments have increased, and severance packages have become more commonplace. Large amounts in severance pay are not unusual, particularly as this recession has bitten so hard and so deep. Many of the people being retrenched are workers of longstanding—good workers whose work is beyond question. They are being retrenched after 25 or 30 years with one firm. In many cases they are receiving perhaps two or three weeks severance pay for each year of service. So, that might involve 50 or 60 weeks of severance pay owing to them which for some people might equate to, say, $30 000 or $40 000, not to mention any other add-ons such as accumulated long service leave, annual leave and so on.

But, when one considers that workers compensation premiums have to be paid on severance pay, one realises how bizarre the system has become. I point out that 25 per cent of the 56 000 employers in South Australia are on a workers compensation levy rate of 7.5 per cent: if, for example, John Doe retires after 25 years and receives a severance package of, say, $40 000 and the employer is on a levy rate of 7.5 per cent—and there is a one in four chance in South Australia that that would be the case—that employer will pay not only the $40 000 in severance pay, which bites deep into his cash flow (he is perhaps retrenching someone because of the downturn in the economy) but also $3 000 in workers compensation premiums, because severance pay is levied for workers compensation at the premium rate. On the sum of $40 000, a rate of 7.5 per cent would mean $3 000 extra. I believe that that should be built into legislation.

I understand there has been some talk that WorkCover has been looking at this. Anecdotal evidence has been provided to me that, in fact, this makes a difference of about $1 million a year in workers compensation premiums. That is a fanciful figure, and I ask the Attorney to obtain from WorkCover—not tonight, but perhaps on notice—an estimate of workers compensation premiums collected directly as a result of severance payments. We need only 330 people

in the same position as the example I have given, at $3 000 workers compensation for each retrenchment, to amount to $1 million straight away. I support these amendments, and I hope that the Australian Democrats, in the spirit of cooperation, will do likewise.

The Hon. C.J. SUMNER: I will refer that question to my colleague the honourable Minister and get him to reply by letter. The Government opposes this amendment. The WorkCover board is already taking administrative action to exclude severance, retrenchment and redundancy pay. Accordingly, this part of the amendment is unnecessary. The exclusion of superannuation payments is a long-term goal of the WorkCover corporation when its funding situation allows.

The Hon. L.H. Davis: Everything's long term for this Government.

The Hon. C.J. SUMNER: Including how long it has been in office. Accordingly, this amendment should be rejected and the decision left with the corporation to determine the timing of exclusion of superannuation payments from the payroll base used for raising WorkCover levies. The loss of revenue from a narrowing of the levy base by excluding superannuation is approximately $20 million per annum. Because WorkCover is required to set levy rates which will achieve full funding, the removal of superannuation contributions will require WorkCover to lift its average levy rates to compensate. This will impact on smaller firms in the main, since the large firms will be the major beneficiaries from removal of superannuation contributions; that is, the Liberal amendment will shift the burden of cost from large to small firms.

The Hon. L.H. DAVIS: The Attorney and I went to the Law School of South Australia in the 1960s, and I have never had the same fascination with the law as the Attorney had. As the Attorney would know, I have more interest in financial and economic matters and what makes South Australia tick. That is not to put down lawyers: Attorneys-General have an important role.

One of the few things I remember from my days in the law school was the supremacy of Parliament. It is not for WorkCover to say whether or not it is a good idea for superannuation or redundancy pay to be removed from the scheme at some future time. We have the capacity in this Parliament to make a decision. I hope we make a decision tonight in favour of deleting superannuation and redundancy packages from the ambit of workers compensation levies.

The Hon. J.F. STEFANI: I certainly support my colleague's comments. The practicality of collecting WorkCover levies on superannuation is certainly out of the question. It was never intended in the first instance, I am sure, that superannuation payments be included. Certainly, it was not included under the old system of workers compensation. No superannuation payments were ever included in the wage package and payments made by companies to their insurers.

We have the situation now where WorkCover has been collecting the additional revenue. It is also collecting, as quite rightly pointed out by my colleague, on termination payments. It really is absurd that, when a worker loses the job that he or she had, the employer is compelled to pay a levy on that payment when the job is no longer there and when the worker is no longer employed. It is just absolutely absurd.

The Hon. I. GILFILLAN: I think the levy on superannuation was imposed, in part, because of the concern that unscrupulous arrangements could be made between employer and employee and large amounts of money would be transferred into so-called superannuation payments, thereby reducing the wage upon which the levy would be paid. If those schemes were entered into, they would be cheating the honest employer-employee relationship. So, a deterrent factor was built into it, as I recall.

The other aspect is that WorkCover required a certain set income, and the levy was pitched on what was estimated as the anticipated total base upon which the levy would be struck. If it does not include the superannuation component, the levy percentage on the wage component would need to be increased commensurate with making up the balance of the shortfall of the levy struck off the superannuation. I am uneasy about it, because I think it is a very difficult position to explain out in the wide world. For the sake of both WorkCover and this Parliament, we ought to be moving in some way to change it, but it still leaves that concern that there will be this manipulation of *quasi* superannuation payments. I do not think it is to anyone's advantage to leave any loopholes so that a fair levy is avoided by unscrupulous people.

I believe that the committee should and will look very closely at ways of overcoming this so we do not have the embarrassment of imposing a levy on the superannuation component, as it is shown, and then not paying a superannuation factor in the workers compensation remuneration. It is my intention, as I have consistently done throughout this Committee stage, to oppose this amendment. However, I picked up with interest the Attorney's statement that WorkCover is currently looking at paragraph *(b)* regarding severance, retrenchment and redundancy pay. However, I also believe we do have a problem, if it is no more than just explaining it in rational terms, over the issue of superannuation, where we actually have a levy on the superannuation portion of a wage, yet it does not reappear as a benefit.

The Hon. PETER DUNN: I shall add my thruppence worth. As an employer, and having been an employer for many years, I find it highly objectionable to have to pay for something from which I can get no benefit and neither can the employee. The employee does not get sick unless he has a hearing loss that was incurred further back—but the employer would have already paid for that.

The Hon. I. Gilfillan: You were not listening to what I just said.

The Hon. PETER DUNN: The honourable member did not say that. What happens is an employee gets severance pay in lieu of working for an extra six months, but he will not make a WorkCover claim because he is not going to be damaged or ill, or whatever, because he is no longer employed by anybody. So, I think to have to pay WorkCover on that is nothing but cheating, and that is taking away and adding to the costs of an employer, and he would quite easily say that he will not employ another person in his place. I have my own document here, relating to my small business, and it is quite distinct: on the back it says:

> You will pay for gross wages, salaries, plus casual staff wages, including termination payments . . . employees' superannuation contributions, including 3 per cent productivity superannuation . . . working directors' fees, benefits and other allowances, if not included in the above . . . and subcontractors deemed as workers.

I think it wrong to have to pay for something that you cannot get.

The Hon. I. Gilfillan: Do you pay superannuation for your workers?

The Hon. PETER DUNN: Of course I do; I am compelled to pay 3 per cent.

The Hon. I. Gilfillan: You don't pay any extra?

The Hon. PETER DUNN: Not unless we have an agreement. I have a son who works for me and I pay superannuation for him. If his employment terminated with me, and we had an agreement to pay him out, I cannot see why, when he is working for someone else, I should have to pay WorkCover on him—when he is not working and benefiting me. I think it is an outrage.

New clause negatived.

Clause 13 passed.

Clause 14—'Application for review.'

The Hon. C.J. SUMNER: The Government opposes this clause.

Clause negatived.

New clause 14a—'Medical examination at request of employer.'

The Hon. L.H. DAVIS: I move:

Page 7, after line 24—Insert new clause as follows:

14a. Section 108 of the principal Act is amended—

(a) by inserting after subsection (3) the following subsection:

(3a) A report must be prepared on the outcome of the examination and the corporation must send copies of the report to the employer and the worker.;

(b) by inserting 'or a report prepared' after 'examined' in subsection (4);

and

(c) by inserting 'or the preparation of the report' after 'examination' in subsection (4).

This again is consistent with the Liberal Party's close review of the legislation. It seeks to tighten up the WorkCover legislation by providing that an employer may require such a report or independent medical examination. WorkCover must comply within a reasonable time frame and the employer is to receive a full copy of the report.

Many problems have been brought to my attention in recent months where the employer feels let down by the delay in receiving the report of the medical examination. Sometimes examples of malingering or perhaps even fraud have been allowed to remain unchecked because there has been tardiness in the reporting procedure. Quite often, the employer has knowledge and information that will be of assistance to all parties, and I think this requirement for a progress report and medical examination proposed by the Liberal Party is a constructive suggestion.

The Hon. C.J. SUMNER: This proposal is opposed by the Government. Power already exists in section 107 for the employer to request a report from the corporation on the medical progress of the worker and/or the worker's incapacity. The corporation must prepare such a report. It is considered unnecessary to make it mandatory for a report to be prepared in every case.

New clause negatived.

Clauses 15 and 16 passed.

Title.

The Hon. C.J. SUMNER: I wish to respond to a question asked earlier on journey injuries. I am trying to keep the Committee fully informed on all issues relating to this matter and, in particular, to give full explanations to the Committee on the Government's approach to the legislation.

In Victoria, there is similar coverage of journey accidents to that which exists in South Australia. The legislation covers journeys that are generally covered in South Australia whether in a motor vehicle or by some other means. Queensland also has similar coverage to South Australia. New South Wales amended its Act on 1 May 1990, but there is still some doubt before the courts as to what the words actually mean.

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: No, they did not delete 'journey accidents'.

The Hon. L.H. Davis: They certainly modified them.

The Hon. C.J. SUMNER: They modified them, but they certainly did not delete 'journey injuries' completely, which was your proposition. In general, they covered journeys from the boundaries of a worker's property to work and the reverse, but a worker is not entitled to compensation if he or she shares any fault for the accident. If a worker is under the influence of alcohol or any other drugs—as under the Road Traffic Act of New South Wales—the worker is automatically assumed to be at fault.

An exemption to the fault provision provides that if the risk of injury is increased by reason of the worker's employment, the worker may be entitled to compensation—for example, a worker who is more tired than would ordinarily be the case because they had to work a double shift or a worker who is not used to driving on dirt roads but is required to do so as part of his employment and has an accident.

That is three jurisdictions. My recollection is that journey injuries have been covered in jurisdictions in most States of Australia for many years. Journey injuries were covered in South Australia in, I think I said, 1966, and my understanding is that journey injuries have been covered in other States as well for many years, probably even before the 1966 South Australian legislation, because at that stage we were very much a follower in workers compensation conditions, and it is quite likely (although I do not know for sure) that South Australia was, in fact, one of the last States to introduce journey injuries. So, they do exist, at least in the three States I mentioned, and my recollection is that they exist in other States as well. It is true that they have been modified to some extent in New South Wales, but certainly not deleted.

Title passed.

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

That this Bill be now read a third time.

The Hon. L.H. DAVIS: As we come out of Committee with an amended Bill, the Liberal Party must express its regret at the Government's failure to accept the challenge that has been thrown down by the Liberal Party on behalf of the 56 000 employers under the WorkCover scheme and the exempt employers, who always have important representation in South Australia. The Bannon Government has backed down on its promises to employer groups earlier this week who, understandably, were angry when they met with the Premier.

They were concerned about South Australia's high workers compensation levy rates and clearly asked for Government support with this legislation. The Premier assured the employers that he expected that the second year review issue would be dealt with this week, but today we have seen Government opposition to Liberal Party amendments that sought to overcome the problems created by the decision in the case of James. It even rejected the more moderate and, I think, inadequate proposals of the select committee, which had previously at least enjoyed the support of the Minister of Labour (Hon. R.J. Gregory).

Mr Bannon must explain his outrageous backdown. His Government is clearly anti-business, and the Premier has clearly bowed to union pressure in rejecting critical changes. We have today been debating the most significant changes to WorkCover legislation since WorkCover was introduced into South Australia in 1987. Here was an opportunity to grasp the nettle, to bring about change and to create a competitive workers compensation scheme in South Aus-

tralia that was attractive to employers from a cost point of view as well as being fair to workers unfortunate enough to suffer injury.

Because of the Government's refusal to grasp that nettle, the Bill has come out of Committee in largely unamended form, with key provisions relating to stress passed not with the support of the Government but only with the combined support of the Liberal Party and the Australian Democrats picking up the recommendations of the select committee, with no attempt to address the second year review problem on the Government's part and no attempt to debate seriously the issues and the many amendments put forward in a constructive fashion by the Liberal Party. The Liberal Party has worked tirelessly with a wide range of employer groups and other interested parties over recent months to put forward a comprehensive package.

We have taken this legislation seriously but, sadly, the Bannon Government has not. Because the Government has refused to follow the unanimous recommendations from the parliamentary select committee, South Australia remains with the highest workers compensation rates in the land and, because the Government has rejected the amendments from the Liberal Party that would have slashed WorkCover rates by 20 per cent, South Australian employers will not be saving $60 million this year—savings that would perhaps have created many thousands of new jobs. The 55 000 employers registered with WorkCover are entitled to be very angry with the Bannon Government.

Bill read a third time and passed.

CRIMINAL LAW CONSOLIDATION (DETENTION OF INSANE OFFENDERS) AMENDMENT BILL

Returned from the House of Assembly with amendments.

SUBORDINATE LEGISLATION (EXPIRY) AMENDMENT BILL

Returned from the House of Assembly with amendments.

LEGAL PRACTITIONERS (LITIGATION ASSISTANCE FUND) AMENDMENT BILL

Returned from the House of Assembly without amendment.

STATUTES AMENDMENT (ILLEGAL USE OF MOTOR VEHICLES) BILL

The House of Assembly requested a conference, at which it would be represented by five managers, on the Legislative Council's amendments to which it had disagreed.

The Legislative Council agreed to a conference, to be held in the Legislative Council conference room at 10 a.m. on 5 May, at which it would be represented by the Hons Diana Laidlaw, Bernice Pfitzner, R.R. Roberts, T.G. Roberts and C.J. Sumner.

REAL PROPERTY (TRANSFER OF ALLOTMENTS) AMENDMENT BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendments.

SUMMARY OFFENCES (CHILD PORNOGRAPHY) AMENDMENT BILL

Returned from the House of Assembly with amendments.

WILDERNESS PROTECTION BILL

Adjourned debate on second reading (resumed on motion.)

(Continued from page 4612.)

The Hon. PETER DUNN: I support the Bill, although I have a few queries. It is inevitable today that wilderness areas will be proclaimed. The wilderness areas in this State are probably different from most other areas as we perceive them.

The Hon. M.J. Elliott: They are not the same, either.

The Hon. PETER DUNN: That is a comment one would expect from the Democrats. If we were in Tasmania we would expect a wilderness to be a rugged high rainfall area. The Amazon delta or the South Pole are also wilderness areas. South Australia is more like the South Pole—we do not have huge amounts of vegetation in our country. Nevertheless, I guess those areas are worth protecting, although the world has many millions of hectares of that sort of country. The size that is proposed for South Australia is significant. If my calculations are correct, it is an area bounded on a triangle of approximately 320 kilometres by 320 kilometres.

The Hon. Barbara Wiese interjecting:

The Hon. PETER DUNN: I think the Minister is right. It probably would be nearly as big as Texas. It is from about here to Port Augusta square, and that is quite a significant part of South Australia.

The Hon. M.J. Elliott interjecting:

The Hon. PETER DUNN: I said it was square; therefore, that is a triangle. I suspect that area will be mostly in the northern and drier parts of the State; I can anticipate parts of the Simpson Desert, parts around Lake Eyre, areas in the unknown national park and perhaps small areas in some of the more densely timbered areas like the bigger national parks such as Ngarkat, Hambidge, Hincks and perhaps those on Kangaroo Island. There may be very small areas in the centres of those parks which could be made into wilderness areas. By definition, it is a wild and uncultivated area. I presume that means it cannot have had the hand of man upon it or feral animals.

The Minister, in her second reading speech, made a quite remarkable statement. She referred to 'seemingly endless tracts of forest'. I fail to find endless tracts of forest in South Australia. There is an enormous amount of heath country, but very little forest. Woodland, yes, desert, yes, but not 'seemingly endless tracts of forest', as the Minister stated in her second reading speech. The definition is quite clear. It is an area which has had very little contact with man and with feral animals, other than native animals.

All wilderness areas are subject to change. I was interested to hear the Hon. Mr Elliott—one could probably say that he is a feral politician; there are not many of them, but they create a lot of havoc in the area—say that these areas did not have animals in them and they did not change.

The Hon. M.J. Elliott: I didn't say that.

The Hon. PETER DUNN: You said there was very little change and that they had not changed for thousands of years. But they do; they change all the time. They change not just because we are here. Over millions of years change always takes place on the surface of the earth, and there will always be change. I suspect that he meant to say that

he wanted that change to be as slow and natural as possible. I agree with him in that regard. There are not a lot of human beings in those areas. Human beings are probably the most destructive animals on earth, mainly because of their numbers. Perhaps this legislation should look at population explosions or control rather than trying to preserve deserts. We should try to keep our numbers down, particularly the Democrats. If we kept them down, I am sure the country would be better off.

This is stand alone legislation; it deals with a specific. It has been put forward by a group of concerned people, and I agree with what they are endeavouring to do. It is very good of them to put that view forward. However, it is interesting to note that they all come from within the city. I suspect that is because they do not have contact with wilderness areas. Some of us have more contact than others with wilderness areas. Sometimes wilderness areas can be very harsh and uncomfortable; at other times they have great beauty.

The arguments I have heard so far seem only to refer to the beauty of wilderness, but wilderness is not necessarily always beautiful. Ask Scott of the Antarctic or Sir Douglas Mawson how hard it was traversing those areas. This matter has been put forward by a group whose members are a little blinkered and who perhaps wear rose-tinted glasses. If they want to introduce such legislation and want everyone to accept their ideas, perhaps they have to pay for it, and it behoves all of us in the State to pay for the legislation and its results.

As has been said by other speakers, I do not believe that the Government puts enough money into its national parks and reserves, and I do not believe it will do so even through this wilderness legislation. It sounds good and it is something to mouth off in running up to an election. It sounds marvellous to say that we have put forward wilderness legislation, but it makes not one jot of difference to the State. When we declare an area a wilderness zone, the only impact is to keep perhaps 10 people out of it in a year. I do not think it makes any difference, but it sounds good. If that makes people feel comfortable, I am happy with that. Life is too short to be making people feel angry and grumpy and, if they feel happy, that suits me.

The Hon. M.J. Elliott interjecting:

The Hon. PETER DUNN: The feral Democrats are at it again. As I pointed out, the cost of that protection will be high and, if the cost is spread across the State, it is not so great, but I refer members to the heritage agreements and the compensation to be made in respect of native vegetation retention. They have slowed down, and obviously the Government has no money to meet those commitments that it made. That is an aspect that worries me about this legislation. The Government has the right to introduce this legislation, as it did flag it prior to the last election, and I am pleased to see it honouring one of its commitments.

The Hon. K.T. Griffin: They have not honoured too many.

The Hon. PETER DUNN: That is right, but this is one that the Government is honouring, and I suspect that it is one regarding which it can make a lot of noise and do a lot of chest thumping prior to the next election. There have been concerns about wilderness legislation by interested groups, in particular the mining industry. Mining is an important part of our way of life. Australia has many resources but few people, and that always will be the case. To start off with, we do not have the wherewithall to feed 400 million, 300 million, 200 million or 100 million people. We do not have the water to supply the cities necessary to house that population. By its very nature, Australia will always have natural resources in abundance compared with the number of people. We cannot use them ourselves. We will be able to export those resources and it would be selfish of us if we did not export them to the rest of the world.

Furthermore, it raises and maintains our standard of living compared with that of the rest of the world. Over the past 10 years we have proven that we are poor in the manufacturing and person intensive industries where we have been unable to compete with the rest of the world, because fundamentally we are fairly lazy. However, we have this natural resource of minerals and perhaps hydrocarbons, which can be used to our benefit.

Those people have indicated that they have some concerns with this legislation. I think that commonsense will prevail and, if there were an important find of hydrocarbons or a mineral which was required in one of those areas, with today's modern technology it might be possible to extract those hydrocarbons or minerals or whatever it might be without causing many problems.

The Hon. M.J. Elliott: You could tunnel under the wilderness.

The Hon. PETER DUNN: That is one of the best suggestions that the feral Democrats have made for quite a while, that is, that we could tunnel under it.

The Hon. M.J. Elliott interjecting:

The Hon. PETER DUNN: Maybe that is the case; I do not know. Modern technology and its wonders can put a man on the moon, so I do not see why we cannot extract minerals from underneath a wilderness area.

The Hon. T.G. Roberts: BHP ferrets.

The Hon. PETER DUNN: No comment. What is worrying those people is that they are excluded from the areas surrounding the wilderness zones. Some companies that have tenements in the zones are worried that they will be excluded from areas into which they have put considerable money for exploration. I have some concerns, although I will be interested to listen to what is proposed when the Bill reaches the Committee stages.

One of the things that concerns me is the exclusion of exploration by scientific personnel. It appears that that would be absolute, although I note that we may put roads through the area for people to enjoy it. If that is the case, I cannot see why, for scientific purposes, people with specific requirements should not be allowed to enter those areas and conduct scientific experiments. In fact, I would have thought that the very idea of having a wilderness area is so that people can perhaps look backwards into history at what we had. Quite often, important discoveries are made under that regime. As members know, we are in a great economic recession and today I think we need to create jobs. One of the things that worries me about this legislation is that I do not think one job will be created. The only jobs affected are ours when we are debating it here in this Parliament. Declaration of a wilderness zone does not create jobs: in fact it excludes jobs. This Bill could probably be called trendy legislation.

The Hon. T.G. Roberts: Does that mean you join the trendies?

The Hon. PETER DUNN: I think it is quite trendy and vote grabbing, but I support it, so I suppose I can be called a trendy. I am very fond of the country but not so fond of the city, which I find a bit overpowering. I do support our parks and natural reserves, provided that people are allowed to go into them and use them. I will support the wilderness declared in those areas, and I understand that most of the wilderness will be declared in what are now national parks. The Bill does not give an explanation and the Minister does

not seem to be very interested in telling us what areas will be declared wilderness zones.

The Hon. M.J. Elliott: The Committee has to do that. It is one of the jobs of the Bill.

The Hon. PETER DUNN: That is quite correct, but I would have thought there would be some indication other than an indication that 2 per cent of the total area of the State will be wilderness areas. I suspect that most of the area will come out of present national parks or reserves. Earlier I said that I thought the reason this legislation was being introduced was to cobble together city votes. City people get terribly passionate about things. I do not know what causes it, whether it is getting on the bus in the morning and sitting there stultified as they go to work—

The Hon. M.J. Elliott interjecting:

The Hon. PETER DUNN: Yes, that is exactly right, or reading the morning newspaper. But, city people get terribly passionate. Every now and again something excites them. They rear up on their hind legs and head in one direction. They are like lemmings: if there is a cliff in front of them they will go straight over it. They are like feral animals; there are no natural predators for them. They seem to go on forever and they breed up. It is a bit like the eucalyptus in India: it has no predators, it takes over and becomes feral. These city people say, 'I have to have this wilderness area; I must have it.'

The Democrats have a passion very much like that, and that worries me more than the establishment of wilderness areas because, if they get the bit between their teeth, one will not be able to hold them back. If that occurs and if we have all these wilderness areas we will not be able to produce enough to feed ourselves. I think that there ought to be a limit on these wilderness areas.

The Hon. M.J. Elliott: There's hardly any wilderness left.

The Hon. PETER DUNN: If there is no wilderness left, why are we debating this legislation. I have just been talking for three minutes about the lemmings-type city people who are mad for wilderness areas, and then the honourable member turns around and says that there is not any left.

The Hon. M.J. Elliott: I said that there is hardly any left.

The Hon. PETER DUNN: If there is hardly any left, we hardly need any legislation. The logic of a lot of city people defies imagination. While we have a chance I think it is important to have some wilderness legislation, but not because we want wilderness legislation, we want it because it will be useful to us some time down the track.

The Hon. M.J. Elliott: For what?

The Hon. PETER DUNN: The honourable member says, 'For what?' He is supposed to be the resident guru.

The Hon. M.J. Elliott: I know. I just want to know why you think so.

The Hon. PETER DUNN: There you go; there is a perfect example. The honourable member says that he knows. He comes from the city. He has lived in the country for about a quarter of an hour and he knows all about it. That is the logic that worries me from people who promote this sort of legislation. It is useless legislation if it does not have a purpose, and I would hope that this legislation has a purpose and that the Minister is putting it up for a reason other than to buy votes and be able to beat her chest for those people who will vote for her. I think that this legislation has been introduced for a more specific purpose than that, and that is to retain some beauty around the country so that my kids and grand-kids, and all members' grand-kids, will be able to say, 'Perhaps this is what the Simpson Desert looked like.' I add, for the Hon. Mike Elliott's benefit, that the Simpson Desert changes from year to year. If you go there now it would be in desert form because there has been no rain, but if there was 50 millimetres of rain tomorrow, within a month it would be a garden.

So it changes from day to day. However, that does not alter the fact that it is a wilderness area in its own right, and that is what I am talking about. I suspect that the city people will not bother going up there because it is a bit too far away. Nevertheless, I support the legislation for all the reasons I have given and I hope that these feral Democrats and these feral city people do not ruin it when they get there.

The Hon. BERNICE PFITZNER secured the adjournment of the debate.

STATE GOVERNMENT INSURANCE COMMISSION BILL

Adjourned debate on second reading.

(Continued from 15 April. Page 4316.)

The Hon. L.H. DAVIS: The Liberal Party supports this Bill, which seeks to make wide-ranging amendments to the State Government Insurance Commission legislation. In fact, the Bill seeks to repeal the Act of 1970 and is a substantial rewrite of that Act. It introduces a framework for the regulation of the State Government Insurance Commission, it develops guidelines that bring the commission much more into line with competitors operating in the private sector, it sets standards of behaviour for its directors—outlining in particular matters such as conflict of interest situations—and it deals with matters of fundamental importance such as investments, reporting procedures and the fact that SGIC should be accountable to the Parliament through the responsible Minister, namely, the Treasurer.

The Bill also recognises the many deficiencies in the old Act, including the failure to require SGIC to have separate funds and standards of practice that are required by law of its private sector counterparts. It goes without saying that this rewrite of the legislation comes about because of the report of the Government Management Board review of SGIC's activities. The committee comprised Mr John Heard, a prominant Adelaide accountant, Mr Dick McKay, the former State Manger of National Australia Bank and Professor Scott Henderson, Professor of Accounting at Adelaide University. They each have varied and practical experience and their work complements that done by the Government Management Board representatives.

The Bill highlights all that has been wrong with the Bannon years. There has been a lack of management, a lack of business savvy, and a lack of understanding of commercial activities. There is no better example of that than the dismal record of the State Government Insurance Commission in recent years. Members will have heard me speak on this subject on more than one occasion when I have railed against the SGIC and its commercial failures.

I do not intend to go over old ground. However, it is important to put on the record some of the problems which have led to the legislation which we are debating this evening. In 1990-91, the State Government Insurance Commission reported a net loss of $81 million. That is a lot of money. In 1992-93, there is probably no prospect of a much better result, because the sins of the SGIC's investment practices are coming home to roost. In 1986, I made a speech commending the SGIC on its investment practices and on its management style. It is no secret in this Council that I have had some involvement with SGIC over a long

period. Before I entered this Parliament I was an adviser to SGIC on investment matters. In many ways, I guess I could have said that I probably invested more of SGIC's funds than any other financial institution—in the early years, most certainly. Of course, immediately I came into Parliament, I ceased to have any financial dealings with that corporation.

However, in those days it had a predictable, conservative and well thought out policy. But from 1986 onwards, it fell sucker to the mythical belief that it was some form of Alan Bond running late in South Australia. No better instance of that could be seen than in the fact that the SGIC took on a put option in 333 Collins Street, Melbourne. In late August 1988, the Premier signed the put option. There was no safety net under that put option, no thought of reinsurance. So, SGIC took a risk for a $10 million to $20 million fee. That was the premium that it received for underwriting the risk, and that risk was ownership of a building at 333 Collins Street, Melbourne.

From mid-1991, it has been the not so proud owner of 333 Collins Street, Melbourne, at a cost of $465 million with what can be described in polite company as a friendly valuation at June 1991 of $395 million, occasioning it to write down that asset on the books by $70 million. However, the borrowings that SGIC has undertaken for that building require an interest bill of $1 million a week, an interest bill annually of $52 million, against a rental income which is probably $7 million to $8 million per year, even though the building is now 40 to 45 per cent occupied. Vacancy rates in the Melbourne central business district are 26 per cent and will rise through the next two years to 30 per cent. That was the assessment within the past fortnight. The prospects for 333 Collins Street, Melbourne are grim. That building represents almost one-third of the total investments of SGIC.

On top of that, it has the Terrace Hotel in the books at $100 million, written down to $80 million last year, and then an assorted, ragged bunch of buildings in and around Adelaide, many of which are vacant. Then it has had, in my view, what can be described, again only politely, as a very suspect and doubtful practice in making loans to persons with close links with SGIC, and I refer quite unblushingly to the $20 million loan made to the Chairman of SGIC by SGIC. Mr Kean received a $20 million loan, a loan six times larger than any other loan ever made by SGIC for mortgage purposes, the only loan SGIC ever made which was for 100 per cent of the cost of the building. That was a speculative building project at 1 Anzac Highway with no head tenant at the time—

The Hon. Barbara Wiese: Who put up the security?

The Hon. L.H. DAVIS: —and that building remains empty three years later. The honourable Minister of Consumer Affairs interjects and says, 'Who put up the security?' I do not think that really matters. What the security was is not the point. The point was that SGIC had never before, or since, lent 100 per cent, and, if you speak to the leading insurance companies and many of the leading banks of Australia, they roll their eyeballs skyward and say, 'We would never do such a thing, even for a blue chip building fully tenanted in a well established precinct'—all the things that 1 Anzac Highway was not. They would lend no more than 60 to 70 per cent. In other words, it was a transaction grossly at variance with commercial practice. In fact, I have been told quite recently that the total mortgage loan book in SGIC was only $33 million, and $20 million of that was with the Chairman of SGIC, Mr Vin Kean.

What sort of example is the Bannon Government setting for the public of South Australia to allow transactions like that? What sort of example is the Bannon Government setting for the people of South Australia to allow a transaction where the SGIC, at very late notice, bid successfully for another empty building at 1 Port Wakefield Road, Gepps Cross—a building which happened to be owned by Vin Kean, which happened to have been bought by him a few weeks earlier for $1.4 million, and which happened to be bought by the SGIC for $1.8 million, empty at the time and empty today, three years later?

That is the sort of commercial behaviour which I find unacceptable and which the commercial people of Adelaide shrink from and cannot believe. That is the sort of commercial practice that has brought us to this Bill tonight. It is one of the many aspects which has been criticised in the Government Management Board review of SGIC's business activities. With this baggage of appalling property investments for the most part, the SGIC has been forced to sell off its jewels. It has reduced by half its holding in one of Australia's greatest and most successful public companies, Fauldings. It has cut its investments from 9.5 per cent to something under 5 per cent, all the time with Fauldings' share prices rocketing skywards.

It has cut its holdings dramatically in SA Brewing, again another most successful and well diversified South Australian company. It has argued ironically that it has been cutting back on these investments because the weighting in these two stocks is too much while, at the same time, it has plonked one-third of its investment assets into 333 Collins Street and another $100 million investment in the Terrace Hotel, which is eating its head off more quickly, I suspect, than is its clientele.

Another point that has to made about this legislation is that it corrects the problem which, again, was caused by sloppy managment, where SGIC made illegal interfund loan transactions, to the benefit of its life fund and to the detriment of its Compulsory Third Party Fund. Because SGIC was forced to correct this illegal practice, taxpayers of South Australia have had to fund a $36 million payment to SGIC, which is partial compensation for the losses incurred by the compulsory third party road insurance fund, as a result of these illegal interfund loan transactions. Of course, we have yet to hear from the Government as to when it will make an announcement about the permanent capital that SGIC will require as an injection over and above the $36 million injection for the illegal SGIC loans that I have just mentioned.

Certainly, this Bill is supported by the Liberal Party, and in our usual meticulous fashion we have consulted with the insurance industry and with other interested parties, including the RAA, and they are satisfied with this Bill. It was of no surprise that the legislation is not going to be amended in the Legislative Council because, after all, this legislation is the outcome of extensive consultation, involving SGIC, Treasury officials and the Government, following the scathing attack on SGIC by the Government Management Board report. The legislation was subject to further scrutiny by a select committee of the Lower House and amendments were recommended by this select committee.

One of the select committee recommendations that I thought was quite useful involves the establishment of a charter for SGIC's future operations, although it is interesting to note that Deputy Under Treasurer, John Hill, in giving evidence to the Committee said, 'Well, you can have the best legislation in the world but unless you have good management you can still lose taxpayers' money.' Another problem that was exposed by the Government Management Board was the fact that the board of SGIC lacked in numbers, that for a long period of time SGIC had one less director, one less board member, than was required under

the Act, and it is pleasing to note in the Bill that the board is being increased to seven.

Other important recommendations that I want to touch on concern the access of the Under Treasurer or his nominee to the board and the minutes of proceedings of the board, limiting board membership to a total of 10 years, and more regular and more formal liaison between the Treasurer and the Commissioner. It was interesting in reading the evidence, as I did, to note the vast contrast between the contact between Treasury and the commission in recent years, compared with the contact that occurred during the Tonkin Liberal Government. Also recommended was that performance indicators on the Compulsory Third Party Fund are to be published. The Minister will have power to impose solvency requirements on the commission. Also, that past illegal acts are going to be declared valid, contingent upon the commitment by the Treasury to replace moneys lost from the CTP Fund due to interfund loans and placements for poor investments in that fund.

We have addressed that matter of $36 million being injected by the taxpayers of South Australia and the fact that such a replacement should be treated as a capital correction as distinct from a capital injection by the Government.

One of the comments made by private insurers is understandably that the SGIC operates under a considerable advantage. It has the ability to rely on its Government guarantee. It means a lot in troubled economic times to investors and potential investors if they can see that their insurance products and their investments in insurance products and other products offered by SGIC have a Government guarantee. That means something. It is an attribute that is advertised strongly by SGIC in selling its products through advertising and other means, and private insurers I think understandably believe that SGIC should pay a commercial fee for the Government guarantee. Whilst there is provision in the Bill for that to occur, it is not mandatory, and I indicate that during the Committee stage of the Bill I will ask questions about that matter.

The other point which I understand was raised by the RAA in its evidence to the Committee and which I think will come into focus in coming months is the application for new accounting standards set down by the accounting profession. Standard AAS26 (financial reporting of general insurance activities) will require the SGIC to account for any unrealised gains or losses on their investments which include their property investments. In other words, we now have a situation where property investments must be valued on an annual basis. They have to be taken into the profit and loss account. This will create enormous volatility in the profit and loss account and, in my view, it will act in a very detrimental fashion, in the case of SGIC, in the short term. Because of the weakness in the property market and the deterioration of the property market in Melbourne over the past 12 months, it is hard to believe that Collins Street will remain in the books at $395 million. My contacts in Melbourne tell me that that certainly should not be the case.

The Hon. G. Weatherill: You shouldn't believe them.

The Hon. L.H. DAVIS: I think you should. If you have been to Melbourne and you see that one floor in every three is vacant, that fact is hard to hurdle. Whilst it might be a nice building, ultimately the market decides its value.

SGIC, with the downgrading of its assets, with an enormous weight of its assets (something between 40 per cent and 50 per cent) now in property, many of them earning little if any income, is in a weakened position financially. It saddens me to see SGIC in such a weak financial position. This legislation is being introduced after the horse has bolted.

I want to review some of the other matters relating to the legislation, whilst I am sure that my colleague the Hon. Trevor Griffin will talk more directly on some of the technical and legal aspects of it. It is worth remembering that in early 1991, following the announcement of the horrendous losses of the State Bank of South Australia, the Government Management Board was asked to examine all financial institutions in South Australia, commencing with the SGIC. The Liberal Party had been concerned about the rumours circulating about SGIC and, particularly in the middle of 1991, asked a series of questions and raised a number of concerns about SGIC, its illegal interfund loans, property investment, 333 Collins Street and the lack of accountability.

As I said, I am pleased to see the notion of statutory authority accountability to Parliament through the Minister addressed in the Bill. I am also pleased to see that one of my favourite hobby horses, the prompt reporting by statutory authorities to Parliament on an annual basis, has been reintroduced, because one of the little-remarked ironies of SGIC is that, through an amendment in this Parliament—which, I must confess, I supported four or five years ago—SGIC was relieved of the obligation of reporting by 30 September each year. It was not obliged to lay its report on the table of the Parliament by the due date required of most other statutory authorities. As a result, in both 1990 and 1991, we had the remarkable spectacle of SGIC annual reports coming down the chimney with Father Christmas.

The SGIC's equity investments have, for the most part, been in the CTP fund, and the investment of money in the CTP fund is something that is very critical and, pleasingly, was examined in some detail by the Government Management Board. The CTP fund has been the major loser out of the shenanigans of the SGIC. That, of course, has been redressed by the capital injection, but it will be interesting now to see exactly what investments each fund has, as the Bill requires a clear delineation between the two funds—the compulsory third party fund and the insurance fund.

The hour is late, and I do not intend to delay the Council further. I am pleased to see this legislation in place, since it is important. Sadly, it is legislation that has been put into place too late to benefit the existing taxpayers of South Australia. We can only hope that future taxpayers will benefit from this legislation, which provides for the accountability, communication and more proper investment practices of SGIC. It is a matter of public record that the Liberal Party has foreshadowed that it believes that the SGIC, in time, should be privatised.

There are no longer any howls from the Government benches when the matter is raised because SGIC in Victoria, a Labor Government in power, will be privatised. SGIC in Western Australia will also be privatised, and that is also true in New South Wales. SGIC in the past five years had a wonderful opportunity to show what a Government commercial operation could do. Sadly, it has not taken advantage of that opportunity. The result of an $81 million loss in the past financial year and the foreshadowed loss for the current financial year obviously demonstrate to all and sundry that SGIC badly needs this new legislation.

The Hon. K.T. GRIFFIN: Like my colleague the Hon. Mr Davis, I indicate support for the second reading of the Bill. It seeks to revamp to a considerable extent the basis for the incorporation of the State Government Insurance Commission and provide for its operations in the future. It has been quite obvious over the past few years that there have been difficulties in the present structure of SGIC and in its method of operation, particularly in difficult economic

times. It has suffered the fate of many statutory corporations linked to Government. When the chips are down in very difficult economic times with property markets and share markets going down and generally a state of economic malaise, statutory corporations do not have the necessary investment, management and operating expertise and competitive pressures as well as the accountability to shareholders that private corporations have and do not have the capacity to govern their own affairs such that they would be able to raise capital easily. They have to depend on Government for that purpose.

In these difficult economic circumstances, bodies like SGIC and the State Bank, however much they try to be entrepreneurial in the sense of being akin to a private enterprise company, invariably have difficulties. I do not believe that the Bill addresses all of those issues. It makes the body even more dependent upon Government than previously, and specifically makes the board of directors subject to direction by the Minister. Therefore, they are not really independent or accountable. There is some difficulty about being independent. We have seen what has happened with the State Bank. The final report of the royal commission and the Auditor-General in respect of the bank will, I am sure, be enlightening in relation to its operations and accountability.

As my colleague the Hon. Mr Davis said, ultimately something must be done to get SGIC into the private sector. I suggest it is no longer the role of Government to run an insurance corporation. There may have been a need for it in the 1970s and 1980s, but that need has now dissipated. In fact, it becomes a liability to Government as the shareholder and sole source of capital for such a corporation. Whilst questions of accountability have been addressed by the House of Assembly select committee and are in some respects significantly upgraded in this Bill from what exists at present, in my view, it does not go far enough.

I want to address only a few issues. Whilst they could be dealt with in Committee, I think it is important to identify them now so that we may have an opportunity to get a response from the Government before the debate concludes. I am pleased that clause 11 has been inserted in the Bill to provide for accountability by a member of the board of the State Government Insurance Commission. Clause 11 reflects the provisions which the Liberal Party inserted in the MFP development legislation. I think that for the first time we have a package of provisions which clearly place considerable responsibilities and potential liabilities upon directors expressed in statute without having to rely upon the common law. It may be that the State Bank Royal Commission will propose some more comprehensive provisions for directors' accountability, but that can be addressed at the time across the range of entrepreneurial bodies corporate established by statute being instrumentalities of the Crown.

Clause 12 contains a requirement for disclosure of interest. Two aspects need some clarification. In some legislation recently I have noticed a requirement to disclose a private interest. There is no definition of 'private interest'. I suggest that has to be clarified. I am not sure what it means, except that I think it goes beyond a pecuniary benefit. Whilst subclause (1) *(b)* provides that a director with such an interest must not take part in any deliberations or decisions of the board, subclause (4) relates only to the disclosure of an interest and places no penalty or liability upon a director who participates in deliberations or decisions of the board even though the interest has been disclosed. The Government needs to address what are the consequences if there is not the sort of disclosure required by clause 12.

Clause 13 relates to the power of delegation, and it is interesting to note that, in relation to where there is a delegation, subclause (4) provides:

A delegate must not act in any matter pursuant to the delegation in which the delegate has a direct or indirect private interest.

In that respect in subclause (6), for the purposes of subclause (4), a delegate:

. . . includes a member of a body, or of the governing body of a company or other entity, to which any powers or functions of the board have been delegated.

I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

STATUTES AMENDMENT AND REPEAL (PUBLIC OFFENCES) BILL

Returned from the House of Assembly with amendments.

STATUTES AMENDMENT (SENTENCING) BILL

Returned from the House of Assembly with an amendment.

WORKERS REHABILITATION AND COMPENSATION (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly intimated that it had disagreed to the Legislative Council's amendments.

Consideration in Committee.

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

That the Legislative Council no longer insist on its amendments.

The Hon. K.T. GRIFFIN: I believe that the Committee ought to insist on its amendments for the purpose of establishing a conference.

Motion negatived.

SUMMARY PROCEDURE (SUMMARY PROTECTION ORDERS) AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Summary Procedure Act 1921. Read a first time.

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

That this Bill be now read a second time.

This Bill amends the Summary Procedure Act in relation to restraint orders, which have recently been the subject of some public comment. The Government does not believe that this can be dealt with in the time remaining this session but would like to give notice of it to the Parliament and the public. In those circumstances, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

This Bill amends the Summary Procedure Act 1921 ('the Act') by three distinct amendments to the provisions relating to restraint orders issued pursuant to Section 99 of the Summary Procedure Act. The amendments provide for:

(a) applications for restraint orders to be made by telephone in urgent circumstances;

(b) the recognition and enforcement of restraint orders granted in other States;

(c) the making of orders concerning disposal of firearms and cancellation of or variation to firearms licences.

The Bill is being put forward now to enable the contents to be given public exposure and to enable public comments to be received. The Government intends to review the Bill further to take into account the comments received. One area in which the government has already received submissions, concerns the adequacy of penalties for breach of restraint orders, and in particular, for repeated breaches of restraint orders. These submissions are currently being examined.

The relevant section of the Act enabling application to be made to a court for the issue of a restraint order is Section 99.

Currently for a restraint order to be obtained a court hearing must be held. In some cases, the police attend a domestic disturbance at night where a person ('the respondent') is harassing and threatening another person ('the victim'). Application for a restraint order cannot be made until the next working day, and even then a breach of the order cannot be penalised until the order is served on the respondent.

The first amendment will enable the police attending at such a scene of domestic violence to apply to a Court, which will in practice consist of a Magistrate rostered on duty for such emergency applications, for the grant of a restraint order. The application will normally be made by telephone, but may be made by any telecommunications device, which will enable applications to be made, for instance, by emergency radio. The Magistrate must satisfy himself/herself as to the officer's identity and must then satisfy himself/herself that it is an appropriate case for the granting of an order. The Magistrate is specifically authorised to speak to other people at the scene in considering the application.

If the Magistrate decides to make an order, having spoken to the relevant people at the scene, the Magistrate will dictate the terms of the order over the telephone to the police officer. The police officer will complete a pre-printed form in accordance with the Magistrate's directions. This completed form then has the status of a Court summons and order and can be served on the respondent.

One of the difficulties which has been faced by the police and by victims in the past has been the fact that an order is not enforceable until it has been served on the respondent. A significant proportion of respondents prove to be very difficult to serve with the restraint orders which have been obtained at court hearings. The Bill proposes to address this difficulty, in the case of telephone orders, by ensuring that if the respondent refuses to remain at the premises voluntarily, he/she can be detained until the telephone application for a restraint order has been finalised. If an order is made the respondent will be served with the order immediately. The restraint order will still be subject to confirmation by a court hearing pursuant to Section 99 (4). The provisions enabling the issue of an order by telephone and prompt service of an order, should enable that the Section 99 (4) hearing to be allocated an early date, thus ensuring a prompt decision on the merits of the application.

The second amendment covers a further deficiency of the present scheme, being that restraint orders do not have any interstate application. This matter has been considered by the Standing Committee of Attorneys-General who have agreed to endorse portability of protective or restraint orders between States and Territories. The amendment will enable the registration of orders obtained under equivalent legislation in other States in South Australian courts and will enable the enforcement of those orders in this State. Victims of violence will hence be able to retain the protection of an order obtained in another State or Territory. Similar provisions are to be introduced in all other States and Territories.

To register an interstate order under the new scheme, a person in favour of whom a restraint order has been granted interstate will present his/her original order to the Magistrates Court for registration upon arrival in South Australia. The details of the original order will be recorded and will then be enforced in the same way as an order obtained in South Australia is enforced.

The third amendment has been made in response to recommendations of both the South Australian Domestic Violence Council and the National Committee on Violence. These recommendations propose that the Act be amended to enlarge existing powers to remove firearms from scenes of domestic violence and for the person against whom an order is made to be restricted in his/her ability to possess firearms and/or to hold a firearms licence.

Currently, the police can only seize a firearm from a scene of domestic violence if the person who has the firearm is not a 'fit and proper person' to have a firearm in his/her possession. In practice, the only occasions when firearms are seized are where the defendant has used or threatened to use a firearm during the incident. Upon the hearing of a summons the Court can make an order that seized firearms be fortfeited to the Crown.

The Firearms Act 1977 as amended by the Firearms Act Amendment Act 1988, and the Firearms (Miscellaneous) Amendment Bill 1992, goes some way towards remedying the difficulties encountered in controlling the use of firearms by offenders and others who appear before the courts. However, further incidents of domestic violence often occur soon after a restraint order is granted and the use of firearms in incidents of domestic violence is widespread. A large number of fatalities result from the use of firearms in domestic violence situations. The likelihood of firearms abuse occurring would be significantly reduced if the Court is required to make orders concerning the possession of firearms and of firearms licences at the time of hearing an application for a restraint order.

The amendment empowers the Court to make orders concerning a respondent's possession of firearms and of a firearms licence and further empowers the Court to specify the conditions upon which the respondent can hold a firearms licence. A respondent who either opposes the grant or confirmation of a restraint order, or who objects to the imposition of conditions on the possession of a firearm or on the holding of a firearms licence will consequently be in a much better position to address the Court and to make representations concerning his/her continued possession of firearms and as to the conditions upon which he/she may hold a firearms licence than at present.

The three amendments overcome many of the difficulties and inequities faced by victims of violence.

I commend this Bill to Honourable Members.

The provisions of the Bill are as follows:

(The Bill amends the Justices Act 1977 as if the Justices Amendment Act 1991 was in operation.)

Clause 1 is formal.

Clause 2 provides for commencement of the measure.

Clause 3 amends the interpretation provision. New definitions of 'summary protection order', 'interstate summary protection order' and 'telephone' are included.

Clause 4 amends the heading to Part IV Division VII to reflect the change in terminology from orders to keep the peace to summary protection orders.

Clause 5 amends section 99, the section under which summary protection orders are made.

New subsection (1a) enables the court in making a summary protection order to make appropriate orders relating to the disposal of any firearms, the cancellation or suspension of any firearms licence held by the defendant or the disqualification of the defendant from holding any such licence.

New subsections (2a) and (2b) provide that summary protection orders may be issued on complaint made by telephone. Procedures are set down for verifying the authenticity of the complaint and the urgency of the case and for issuing a summons and order where appropriate.

New subsection (2c) gives the police power, where reasonably necessary, to arrest and detain a person while a telephone complaint is made so that any order made or summons issued on the complaint may be served on the person.

Clause 6 inserts a new section 100 to deal with the registration in this State of summary protection orders issued interstate.

It empowers the Court to make necessary adaptations and modifications to the interstate order and to vary or cancel the registration of the order on the application of the police, the defendant or the victim.

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

EXPIATION OF OFFENCES (DIVISIONAL FEES) AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Expiation of Offences Act 1987 and to make related amendments to the Acts Interpretation Act 1915. Read a first time.

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

That this Bill be now read a second time.

As this matter will not be dealt with in this session, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

This Bill seeks to amend the Expiation of Offences Act 1987 in several ways.

First it seeks to amend the definition of 'responsible statutory authority' in section 3 of the Act to embrace not only the responsible Minister, or Chief Executive Officer but also statutory authorities and local government councils who may be responsible for the administration or enforcement of relevant statutory provisions that give rise to expiable offences. For example, the Tobacco Products Control Act is enforced by the South Australian Health Commission. The Public and Environmental Health Act is enforced by both the Health Commission and local councils. Neither can presently issue expiation notices except by the cumbersome and time-consuming procedure of authorised officers making reports through the council or Commission, to the Minister of Health, recommending their issue in particular cases.

The second and perhaps the most important change made by the Bill is that clause 4 changes the scheme of the Act so that offences will expiable under the Act where the words 'Expiation Fee' appear at the foot of a provision of an Act or regulation. This will replace the present system whereby offences are made expiable by being designated in the Schedule to the Expiation of Offences Act.

The amendment will allow people when examining an Act, to realise that certain offences are expiable without reference to another Act. It will also mean that decisions on whether or not an offence should be expiable can be considered in the context of discussions on the Act containing the offence, not subsequently by means of an amendment to the Expiation of Offences Act.

The amendment also provides for Divisional Expiation Fees, building on the existing scheme of Division Fines and Imprisonment in the Acts Interpretation Act.

The Bill also provides that the Expiation Notice must be in a form approved by the responsible authority based on the model form which will be prescribed by the regulations. In this way the responsible authority will be able to design a form capable of being generated by their own printer/computer equipment, provided it is based on the model form.

The Bill also seeks to redefine who may issue expiation notices and clause 4 makes it quite clear that only those who are authorised in writing by the relevant Minister, statutory authority or council are empowered to do so.

Provision is also made for an authorised person to withdraw expiation notices.

A late payment regime is provided for the first time, and given that local councils may retain fines, penalties and forfeitures recovered in proceedings commenced by them (see section 717 Local Government Act 1934) the Bill provides that expiation fees recovered under Acts administered by local councils can be retained by them.

In all, the proposed machinery amendments to the Act, are considered to be desirable, for the better and wider administration and enforcement of relevant statutory provisions, as well as enabling more detailed scrutiny of those offences which will be expiable.

The provisions of the Bill are as follows:

Clause 1 is formal.

Clause 2 provides for the commencement of the measure.

Clause 3 enacts a new section 3. Particular reference is made to the definition of 'responsible authority', which will include a responsible Minister, or a statutory authority or council that is responsible for the enforcement of the provision against which the offence is alleged to have been committed.

Clause 4 makes various amendments to section 4 of the Act. In particular, where in an Act, after the enactment of this Act, a provision includes the words 'Expiation Fee', these words will be taken to mean than an alleged offence against the provision (or against the provision in specified circumstances) may be expiated by payment of the appropriate expiation fee. (The Acts Interpretation Act 1915 will set out a scale of divisional expiation fees). An expiation notice will be based on a model prescribed by the regulations.

Clause 5 will allow a person who is specifically authorised to exercise the powers under section 6 to withdraw an expiation notice.

Clause 6 provides a scheme for the late payment of expiation fees.

Clause 7 relates to the application of amounts received by way of expiation fees. As a general rule, such amounts will be paid into the Consolidated Account. However, a council will be entitled to any fee paid in respect of a notice issued by or on behalf of the council. If a notice is issued by or on behalf of a council as a result of a reporting of an incident by an officer of the State, half of any fee must be paid into the Consolidated Account.

Clause 8 empowers the Governor to make regulations for the purposes of the Act.

Clause 9 repeals the schedule to the Act.

Clause 10 and the schedule amends the Acts Interpretation Act 1915 to introduce a scheme of divisional expiation fees.

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

STATUTES AMENDMENT (EXPIATION OF OFFENCES) BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Business Franchise (Petroleum Products) Act 1979, the Commercial Motor Vehicles (Hours of Driving) Act 1973, the Dangerous Substances Act 1979, the Education Act 1972, the Explosives Act 1972, the Financial Institutions Duty Act 1983, the Food Act 1985, the Industrial Relations Act (S.A.) 1972, the Land Tax Act 1936, the Lifts and Cranes Act 1985, the Liquor Licensing Act 1985, the National Parks and Wildlife Act 1972, the Noise Control Act 1976, the Pastoral Land Management and Conservation Act 1989, the Pay-roll Tax Act 1971, the Public and Environmental Health Act 1987, the South Australian Metropolitan Fire Services Act 1936, the Stamp Duties Act 1923, the Tobacco Products Control Act 1986, the Unclaimed Moneys Act 1891 and the Valuation of Land Act 1971. Read a first time.

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

This Bill contains amendments consequential to the amendments to the Expiation of Offences Act.

The consequential Bill amends certain Acts by inserting at the foot of each provision referred to, a Divisional Expiation Fee. Some of the offences referred to have already been expiable under the Act, while others are newly inserted.

Regulatory offences under the Business Franchise (Petroleum Products) Act 1979, the Food Act 1985, the National Parks and Wildlife Act 1972, and the Noise Control Act 1976, are to be included as expiable offences for the purposes of the Act.

Moreover, offences relating to declared 'dry-areas' under the Liquor Licensing Act 1985 are to be included as expiable offences. It is considered by the Commissioner of Police to be a desirable amendment given the increasing numbers of prescribed prohibition areas and the volume of offenders detected and reported by police.

The opportunity has been taken to rationalise some fees so that there is consistency between expiation fees and fines. In some cases maximum fines have been the same but expiation fees have been different.

With the adoption of a Divisional fee system which will complement the already existing Divisional fine system, over time there will be a rationalisation of fees and fines.

This Bill and the Expiation of Offences Amendment Bill will be left on the table until the next Parliamentary session.

This course of action has two advantages. Firstly, the Bill can be amended in the new Session in relation to various pieces of legislation that are presently being processed through the Parliament. (The Firearms Act Amendment Act is an example where this will probably occur). Secondly, it is hoped that these Bills will then be dealt with early in the new Session so that subsequent measures can, if appropriate, adopt the new scheme proposed by these Acts.

I commend this Bill to Honourable Members.

The provisions of the Bill are as follows:

Clause 1 is formal.

Clause 2 provides for the commencement of the measure.

Clause 3 provides that the Act sets out in the schedule are amended to incorporate the new expiation scheme proposed by the Expiation of Offences (Divisional Fees) Amendment Bill 1992.

The Schedule sets out amendments to specified provisions of the various Acts referred to in the long title of the measure.

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

STATE GOVERNMENT INSURANCE COMMISSION BILL

Adjourned debate on second reading (resumed on motion).

Continued from page 4629).

The Hon. K.T. GRIFFIN: In clause 20 of the Bill there is provision for the commission to borrow money or give security for the repayment of loans with the approval of the Treasurer. That is acceptable. The only comment I make about that whole area of commission activity is that I would suggest that there are fewer constraints upon the commission with respect to acquisition of shares and other investments than there is under the present Bill, although one would hope that the relevant committee of the Parliament would keep a closer eye on the borrowing and other activities of the SGIC than has occurred in the past.

It may be appropriate at some time in the future, depending on what happens to the SGIC in the next few years, to consider the inclusion in this legislation of provisions similar to those that have recently been included in the MFP Development Bill relating to accountability to Parliamentary committees, the Estimates Committees and general reporting of financial activities.

Clause 18 contains a curious provision that the board of SGIC must, in consultation with the Minister, prepare a charter for the commission. It seems to me that that is all awry. What ought to happen is that the Government should set the charter in consultation with the board. After all, it is a statutory corporation: it is meant to be accountable to the Minister. It is an instrumentality of the Crown, and to place the onus upon the board to establish a charter suggests that the Government does not really know what SGIC ought to be doing. It is the Government and the Parliament ultimately, I suggest, which ought to have responsibility for establishing the charter.

The Hon. M.J. Elliott: Are you going to seek to amend that?

The Hon. K.T. GRIFFIN: I have not really had much time to think about too many amendments yet but, if the Hon. Mr Elliott wants to take initiative in that respect, I will certainly not deter him from it. It does seem to be rather strange that the charter is something which is not before the Parliament. It will be established by the board with some involvement of the Minister. The charter is laid before the Parliament, but it is not a matter that is subject to scrutiny under the Subordinate Legislation Act. It just seems that it is being laid on the table for notice purposes, and that is all. This Parliament can do nothing about it, and that is rather strange.

The Hon. M.J. Elliott: The charter is more important than the Bill, really.

The Hon. K.T. GRIFFIN: The charter is, because the charter determines what the commercial and entrepreneurial activities will be. For those to be left to the discretion of the board and the Minister seems to me to be quite strange. Clause 22 *(c)* provides that, subject to the regulations, the commission must comply with any other requirement—that is, in addition to specific provisions of the Commonwealth Insurance Act and Life Insurance Act—imposed on insurers carrying on business in the State by or under any Act of the Commonwealth that is declared by regulation to be a requirement that applies to the commission. Again, I would have thought that the proper way to deal with this would be to make both Federal Acts apply unless the commission was exempted from specific provisions by the regulations.

Clause 24 provides that the commission may, in fact, make a contract or arrangement or enter into an understanding in restraint of trade or commerce with the approval of the Minister. That, again, I find rather curious. One must ask, 'Why should the SGIC be in a position where it can make an agreement or enter into an understanding in restraint of trade or commerce?' Obviously, that applies to any service, a price for any service, or the giving or allowing of discount, allowance rebate or credit in relation to the supply of any service. Private corporations are subject to the Trade Practices Act, which would deal directly with any matter that was in restraint of trade or commerce, but it seems that the SGIC is to be treated differently from those which operate in the private sector. It may be that it is different because it is a Government statutory corporation, but I would certainly like some amplification of that.

Clause 25 (6) provides that each fund may be applied in making certain payments or investments. Paragraph *(d)* refers to making such payments as the Treasurer requires in accordance with this Act to be made from the fund. Again, that is a rather strange provision when linked with clause 26, which is in similar terms to that in the State Bank Act, and which only in the past week has been the subject of some comment in the State Bank Royal Commission, where the Treasurer fixes the dividend and the directors must comply.

I have a concern with paragraph (4) of the schedule which validates any transactions, transfers of money or investments made by the Commission before the commencement of the Act in relation to keeping distinct and separate funds. I have a concern that this will validate transfers which have not been lawful. The explanation by the select committee is that we do not really know whether they are lawful or unlawful; therefore we will validate them. I think that is a rather dangerous precedent, but I am not sure how we will cope with it in considering that provision in this Chamber. Paragraph (5) of the schedule provides that:

> The assets and liabilities of the commission in respect of its compulsory third party insurance business and its life insurance business as recorded in the commission's accounting records immediately before the commencement of this Act are to be treated as assets and liabilities of the compulsory third party fund and life fund respectively for the purposes of the establishment of those funds under this Act.

That also validates whatever might have been done in the past, even improperly, and I have a concern about that. Some of the investments are poor investments, made perhaps from the CTP fund for the advantage of other parts of the SGIC business. However, I understand from the select committee's report that it is not easy to unravel the transactions, and maybe one just has to accept that this is the best one can do of a bad job.

There may be several amendments which I will have on file before we consider this in Committee. One will relate to the publication of directions given by the Minister in clause 5 (3), as and when the directions are made—not only publications in the annual report—and also publications in the annual report of any provision which is authorised by the Minister in restraint of trade or commerce. There may be other matters which we will raise in the Committee's consideration of the Bill, but I give notice of the matters to which I have just referred in the hope that that may short

circuit some of the consideration. I support the second reading.

The Hon. M.J. ELLIOTT secured the adjournment of the debate.

WORKERS REHABILITATION AND COMPENSATION (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly requested a conference, at which it would be represented by five managers, on the Legislative Council's amendments to which it had disagreed.

The Legislative Council agreed to a conference, to be held in the Legislative Council committee room at 11 a.m. on 5 May, at which it would be represented by the Hons L.H. Davis, M.S. Feleppa, I. Gilfillan, T.G. Roberts and J.F. Stefani.

WORTHINGTON INQUIRY

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

That upon presentation to the President of the copy of the report of Mr T.A. Worthington, QC as requested by the Premier in his letter of 16 April 1992, in relation to the Minister of Tourism, the report be deemed to be laid upon the table of the Legislative Council and the President is hereby authorised to publish and distribute the report.

The motion is self-explanatory. It is a procedure similar to that which we adopted in December last year when it was anticipated that the Auditor-General's Report would be available in January, when the Council was not sitting. Obviously that was a total waste of time as it turned out.

The Hon. R.I. Lucas: Let us hope that we do not have the same result this time.

The Hon. C.J. SUMNER: The interjection is well taken. If this report is completed before we return in August, as I hope it will be, it is desirable that it be made public, if it can be, at the earliest possible opportunity, and this will provide for that procedure to occur. The only qualification that I would put on that is that the motion we prepared in relation to the State Bank involved a statutory obligation to report to the President whereas there is no statutory obligation in this case. But we hope that the device will work, to get the privilege which is necessary. If at some point we are advised that it does not, we may have to reconsider the matter. However, I am advised by the officers that at the present time this probably is adequate.

The Hon. K.T. Griffin: It is in similar form to the one in relation to the Auditor-General's Report.

The Hon. C.J. SUMNER: It is similar in form to the proposal relating to the Auditor-General. As I say, the only difference is that the Auditor-General has a statutory obligation to report to the President, while there is no such statutory obligation in this case to report to the President. Whether or not that makes any difference, I do not know. I hope it does not. I do not expect it will, but I just put on record that possible distinction between what we did in December and what we are doing now. However, I cannot think of any other way to deal with the matter. So, in so far as possible this covers it, with that small qualification, namely, if on reflection delivery to the President is not appropriate we may have to modify the procedure. I hope it will work. If the report becomes available before we resume in August we will use this procedure to deal with it, if that is at all possible.

The Hon. K.T. GRIFFIN: I support the motion. I think it is important to endeavour to have the report of Mr Worthington made available publicly at the earliest opportunity. This motion should cover the relevant provisions relating to defamation, if that is necessary to be protected against, so I support it. In his reply, the Attorney-General might indicate whether he envisages publishing the Government's response and the principles at the same time as Mr Worthington's report is published, remembering that the terms of reference refer to the tabling in Parliament of the principles and the Government's response in addition to Mr Worthington's report.

The Hon. C.J. SUMNER: That is the current expectation.

Motion carried.

ADJOURNMENT

At 11.8 p.m. the Council adjourned until Friday 1 May at 11 a.m.