LEGISLATIVE COUNCIL

Thursday 26 November 1992

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

CONSTRUCTION INDUSTRY LONG SERVICE LEAVE (MISCELLANEOUS) AMENDMENT BILL

The Hon. T.G. ROBERTS: I move:

That the sittings of the Council be not suspended during the continuation of the conference on the Bill.

Motion carried.

DAIRY INDUSTRY BILL

The House of Assembly intimated that it had agreed to the Legislative Council's amendments Nos 1 and 2 and had disagreed to amendments Nos 3 and 4.

CONSTRUCTION INDUSTRY TRAINING FUND BILL

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

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

That this Bill be now read a second time.

As the Bill has been discussed in the other place, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

INTRODUCTION

This is a Bill for an Act to establish a mandatory training levy of 0.25 per cent on the value of building and construction work undertaken in South Australia, which in turn will provide a fund for expenditure on training provision across the building and construction industry in this State.

BACKGROUND

The levy, and its associated fund have been proposed by the employers and unions in the building and construction industry, with the aim of improving the level of skills of new and existing employees in the industry, with a resultant increase in productive efficiency within the industry.

Employer and union bodies in the industry recognise that building and construction activity is cyclical in nature over time, and have expressed concern at the impact this has on the stock of skilled labour available in periods of industry buoyancy, with resultant loss of possible new contracts to the industry in this state.

In addition, the process of Award Restructuring, already well underway in the building and construction industry will bring much greater pressure to bear on the currently limited training resources of the industry. Award restructuring will link remuneration and career progression to levels of skill acquisition, and will broaden the scope of many occupations within the industry, for which additional training will be required.

It is critical for members to note that the drive for the establishment of the levy and associated fund has come from employer and union bodies within the industry. This is not a government-driven initiative. This is a case where the industry has recognised a problem and taken steps to rectify it. The government is consequently responding to a direct approach from the industry for assistance.

CONSULTATION

The Construction Industry Training Council, which this Bill seeks to replace with a new Construction Industry Training Board, has coordinated an extensive consultation with industry members on the proposal. These have included all unions, employer organisations, peak industry bodies, government and statutory authorities with a direct involvement or association with the industry.

It is particularly encouraging that such a large and diverse industry sector has been able to come together to address this important issue, not only for the future benefit of the industry, but the State as a whole.

As the initiative for the levy has come from industry itself, it has been important that the industry partners were directly involved in the drafting of the legislation, to ensure that the individual and broad concerns of industry members are addressed.

THE LEVY

The legislation provides for a levy on all building and construction work valued at over $5 000 conducted by private sector companies. Government building and construction activity will be exempt from the levy, in recognition of the already high level of training effort by government, and the requirement for the government to remain bound by the provisions of the Training Guarantee Act. With the successful passage of the Bill, the Commonwealth will exempt the private sector building and construction industry from the Training Guarantee Act.

However, all work which is undertaken on behalf of the government by private contractors will attract the levy.

The rate of the levy will be 0.25 per cent, with a capacity for the levy rate to be varied by Regulation up to a maximum of 0.5 per cent. It is anticipated that in a full year, the levy will raise approximately $6.5 million, although this will be dependent upon the actual level of activity in the building and construction industry.

The levy will be payable prior to the commencement of work, at the stage of building approval (where required), but will not apply to works in progress at the time of proclamation.

The levy will be paid by the 'Project Owner', which in most cases will be the holder of a Builder's Licence, or the principal contractor for engineering construction work. Since the principal contractor will be contributing directly to the fund, it is reasonable to assume that subcontractors will also be meeting a proportion of the levy cost. However, it is important to note that the levy will in any case only be paid once on any given project.

Detailed definitions of work which will attract the levy are given in the Schedules to the Act. It is intended however, that repair and maintenance work which is minor in nature and which is carried out by an employee whose employer is not primarily engaged in building or construction work will not attract the levy.

Collection of the levy will be managed by the Construction Industry Training Board, and payment will be able to be made to any agents, such as the existing Industry Indemnity Schemes or a bank, which may be appointed by the Board. A receipt of payment, properly endorsed, will constitute proof of payment for the purpose of gaining a Building Approval from the local council.

THE CONSTRUCTION INDUSTRY TRAINING BOARD

As noted earlier, the Construction Industry Training Council will be reconstituted as the Construction Industry Training Board, and in addition to administering the levy and training fund, the Board will continue the existing functions of the Council with respect to training coordination and advice to the industry and government.

The Board will have the following membership:

Five employer representatives
Three union representatives
Two nominees of the State Minister
One independent presiding officer, nominated by the State Minister

Furthermore, one nominee of the Commonwealth Minister will have observer status on the Board.

This makeup of membership has been proposed by the industry as the most efficient and workable of a number of options which were considered.

Membership of the Board by employer and union groups will be determined by the industry from the lists in Schedule 2 and 3.

In addition to this central structure, the Board will appoint at least three standing committees, to give advice to the Board on training matters and allocation of funds relevant to each particular sector of the industry. It is anticipated that each committee will comprise such people as the Board sees fit to represent the interests of that sector. In addition, working parties may be formed to address issues that cross all three sectors, such as in the case of specialist services.

The activities of the Board will be formally reviewed after three years, and a report will be tabled in Parliament. In the event of any improper behaviour by Board members, the Governor will have the power to remove and replace any member, or may in an extreme circumstance, cause an administrator to be appointed. Whilst these public safeguards have been put in place, I most certainly think it unlikely that they will have to be enacted, given the commitment of the industry to making the levy a successful and integral component of a modern and vital industry in South Australia.

The Board will have vested in it a number of limited powers of recovery of any due but unpaid levy, and penalties have been set for non-compliance with the provisions of the Act in respect of non-payment of the levy.

EXPENDITURE OF LEVY FUNDS

The Board will be required to prepare an annual training plan, setting out the priorities for employment related training to be funded from the fund. Training will cover the full range of occupations in the industry, and will be directed to both entry level employees, and existing employees within the industry requiring skills upgrading.

Money from the fund will be allocated to the sectors contributing to the fund in approximately the same proportions as the resources of the fund have been contributed by that sector, for the purpose of providing training relevant to that sector. It is not intended that the Board become a training agent in itself. Rather, the Board will purchase training in accord with the requirements of the training plan from a range of training providers as appropriate. These may include government as well as non-government training providers, or a mix of both.

CONCLUSION

The government is of the firm belief that this initiative will serve to significantly improve the level and quality of training within the building and construction industry in South Australia. It will assist in the provision of training to a much broader cross section of the industry than is presently the case, and it will help to alleviate the skill shortages which in times of economic growth and recovery are major impediments to the industry, and the whole economy.

A highly skilled workforce is essential for the attraction of investors to our State, and for the task we face in making South Australia truly a leading competitor in the world markets.

The government wishes finally to congratulate the industry on bringing this important initiative to this point, and considers that it sets a fine example to other industry sectors of how they may go about improving the skill profile of their workforce, and gain the unequivocal support of both government and opposition members in rebuilding our State's economy.

I commend the Bill to the House.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1 is formal.

Clause 2 provides for the commencement of the measure.

Clause 3 sets out various definitions that are required for the purposes of the measure. In particular, 'building or construction work' will be taken to include building or construction work set out in schedule 1, subject to any alteration by regulation, and 'project owner' will be taken to be the person or body engaged to carry out the relevant building or construction work or, if there is no such person, the person or body for whose direct benefit building or construction work exists upon its completion. In addition, subclause (2) provides for the constitution of various sectors of the building and construction industry, as defined by regulation.

Clause 4 provides for the reconstitution of the Construction Industry Training Council (S.A.) Incorporated as the Construction Industry Training Board. The Board will not form part of the Crown, nor constitute an agency or instrumentality of the Crown.

Clause 5 provides for the composition of the Board, one being an 'independent' chair, two persons nominated by the Minister on the basis of their experience in vocational education or training, five persons nominated in accordance with the regulations by specified employer associations, and three persons nominated in accordance with the regulations by pecified employee associations.

Clause 6 provides that a member of the Board incurs no personal liability for honest acts undertaken with reasonable care and diligence. A liability that would otherwise attach to the member will attach instead to the Board.

Clause 7 relates to the procedures of the Board. Six members will constitute a quorum of the Board. Subclause (3) will require that any decision of the Board will need to be supported by members of each group appointed under clause 5. A person appointed by the Commonwealth Minister for Employment, Education and Training will be entitled to attend Board meetings and to participate in Board proceedings, but will not have a right to vote.

Clause 8 will require a member to disclose any direct or indirect private interest in a matter before the Board. The member will not be permitted to take part in any deliberations or decisions of the Board in relation to the matter.

Clause 9 sets out various duties that a member of the Board must observe in relation to the performance of his or her functions.

Clause 10 provides that a member of the Board is entitled to receive allowances and expenses not exceeding amounts determined by the Minister after consultation with the Commissioner for Public Employment.

Clause 11 sets out the functions of the Board.

Clause 12 provides that subject to the provisions of the Act, the Board has all the powers of a natural person.

Clause 13 empowers the Board to establish committees to assist the Board in the performance of its functions. In addition, the Board will be required to establish a committee in relation to each sector of the building and construction industry to represent the interests of that sector in the management of the Fund, to advise the Board on appropriate allocations from the Fund, and otherwise to act in relation to its particular sector.

Clause 14 will allow the Board to delegate any function or power to a committee of the Board, or to an individual. A delegation may be made subject to conditions and will be revocable at will. The Board will be required to include a list of delegations made during each financial year in its annual report.

Clause 15 relates to the execution of documents by the Board. The common seal of the Board will only be used to give effect to a decision of the Board and any affixation of the seal will need to be attested by the signatures of two members of the Board.

Clause 16 will require the Board to keep proper accounts and to carry out an annual audit.

Clause 17 will require the Board to prepare an annual report, a copy of which will be sent to the Minister and then laid before both Houses of Parliament.

Clause 18 provides that the staff of the Board are not public service employees.

Clause 19 provides for the appointment of collection agencies by the Board. A collection agency will be entitled to receive a fee agreed between the Board and the agency for carrying out its functions under the Act.

Clause 20 provides that a levy is imposed in respect of the value of building or construction work which commences after the commencement of the legislation. However, the levy will not be payable in respect of work approved before the commencement of the Act, or for which written offers or tenders have been made before that commencement.

Clause 21 provides that the rate of levy will be 0.25 per cent of the estimated value of the work. A regulation may, on the recommendation of the Board, alter the rate, but the rate will not be able to exceed 0.5 per cent in any event.

Clause 22 provides that the estimated value of work will be calculated in a manner determined by the regulations.

Clause 23 provides that the levy is not payable in respect of work where the estimated value does not exceed $5 000. Work carried out by a government authority will also be exempt.

Clause 24 provides that the project owner is liable to pay the levy. The levy will be payable before building approval is obtained or, if no such approval is required, before the work commences.

Clause 25 imposed various penalties if a levy is not paid in accordance with the requirements of the legislation.

Clause 26 will require the project owner to notify the Board if the actual value of the work exceeds by $25 000 (or such other amount as may be prescribed) the estimated value of the work.

Clause 27 provides for an adjustment of the levy if the actual value of the work on completion exceeds $25 000 (or such other amount as may be prescribed).

Clause 28 provides for a refund of levy if any work is not carried out after the levy is paid.

Clause 29 empowers the Board to recover amounts due to the Board in any court of competent jurisdiction.

Clause 30 makes it an offence for a project owner to provide false or misleading information regarding work or its cost.

Clause 31 provides for the creation of the Fund and empowers the Board to invest money not immediately required for its purposes.

Clause 32 requires the Board to prepare a training plan on an annual basis for the purpose of improving the quality of training, and skill levels, in the building and construction industry. A plan must set out priorities for funding. A plan must be prepared on the basis that money will be allocated to training for each sector in approximately the same proportions as the resources of the Fund have been contributed by the particular sector. The plan must be submitted to the Minister for his or her approval. The Board will be required to ensure that funds are only allocated to properly organised training program relevant to the building and construction industry in the State.

Clause 33 relates to the appointment of authorised officers.

Clause 34 sets out the powers of authorised officers.

Clause 35 will render void, as against the Board, any agreement or arrangement to defeat, evade or avoid the payment of levy under the Act.

Clause 36 relates to proceedings for offences against the Act.

Clause 37 relates to the regulations that can be made under the Act.

Clause 38 provides that the Minister must, as soon as practicable after the third anniversary of the commencement of the Act, appoint an independent person to carry out a review of the legislation and provide a report to the Minister, to be laid before both Houses of Parliament.

Schedule 1 sets out various activities that are to constitute building or construction work for the purposes of the Act. Routine maintenance or repair work of a minor nature will not be relevant if carried out by an employee for an employer who is not primarily involved in the building or construction industry.

Schedule 2 sets out the employer associations that are recognised by the Act for the purposes of clause 5.

Schedule 3 sets out the employee associations that are recognised by the Act for the purposes of clause 5.

Schedule 4 sets out various provisions that will empower the Minister to take action if the Board fails to comply with the Act or fails to implement a training plan. The Governor will be empowered, in a case of serious default, to appoint an administrator of the Board for a period not exceeding one year.

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

WINE GRAPES INDUSTRY (INDICATIVE PRICES) AMENDMENT BILL

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

LAND AGENTS, BROKERS AND VALUERS (MORTGAGE FINANCIERS) AMENDMENT BILL

The Hon. ANNE LEVY (Minister of Consumer Affairs) obtained leave and introduced a Bill for an Act to amend the Land Agents, Brokers and Valuers Act 1973. Read a first time.

The Hon. ANNE LEVY: I move:

That this Bill be now read a second time.

This Bill amends the Land Agents Brokers and Valuers Act 1973 by removing from the Act the provisions relating to mortgage financing, and consequently withdrawing access to the Agents Indemnity Fund for future clients of land agents or land brokers when their dealings are for the purpose of mortgage financing.

The protection of the Agents Indemnity Fund is retained for the benefit of people who currently have money placed with agents or brokers for mortgage financing investments. That protection will remain for the duration of current loans. However, the eventual effect of these amendments will be that mortgage financing schemes operated by licensed land agents or land brokers will be regulated entirely by the national corporations Law. This will put land agents or land brokers who conduct mortgage-financing business on the same footing as anyone else who conducts this business.

It is well known that, in recent years, the Agents Indemnity Fund has had claims made on it totalling more than $20 million by people seeking compensation for defaults by land agents and land brokers. Between mid-1987 and the early days of this month, a total of almost $18.4 million was paid out to these claimants. It is expected that most of the remaining contingent liabilities of the fund in respect of these claims will be dealt with in the near future.

These claims were overwhelmingly related to fiduciary defaults by a small minority of land agents and land brokers, arising from mortgage-financing activities. The fund paid almost $5.4 million to claimants caught in the Hodby collapse (although in that case almost $1.6 million was recovered from the estate on behalf of the fund). Defaults by the land broker Trevor Schiller led to payments exceeding $2.2 million. Already more than $4.5 million has been paid on account of defaults by the broker Brian Winzor. And since the decision earlier this year of the Commercial Tribunal in a test case related to the losses arising from the Swan Shepherd collapse, a special task force in the Department of Public and Consumer Affairs has dealt with claims that have required payment of almost $4.5 million, with almost $1.8 million in claims still to be dealt with. Many claims dealt with in that matter have been late claims.

The Government responded to these developments by proposing explicit controls on mortgage financing by land agents and land brokers. These amendments to the Act came into force in 1989. As well, considerable resources were committed to monitoring and education, and that resource commitment has continued. At the same time, the number of agents and brokers recorded as being actively involved in mortgage financing has fallen from 64 in September 1989 to 40 by the middle of this year. The total number of licensees under the Act at June this year was approximately 1 800.

At the time the mortgage financing amendments were before the Parliament in 1988, it was appropriate to extend controls under the Land Agents, Brokers and Valuers Act, because of the large numbers of very significant claims still outstanding, and in an attempt to protect the Agents Indemnity Fund from further claims of this kind. The alternative of leaving regulation to the then Companies Code and its provisions regulating offers and dealings related to 'prescribed securities' was not available at that time. This was because the Companies Code as it then stood did not clearly cover the full range of mortgage financing activities as they were being conducted in South Australia by land agents and land brokers.

However, in the course of development of the Corporations Law, which came into force as a national Act on 1 January 1991, changes to the provisions had the effect of clearly applying to mortgage financing activities of the sort regulated to date in South Australia under the Land Agents, Brokers and Valuers Act. Earlier in 1992, the Australian Securities Commission settled the terms on which it has been prepared to grant exemptions from some of the requirements of the Corporations Law to businesses offering mortgage-investment schemes in other States.

It is clear that the controls on this form of investment scheme that are available under the Corporations Law, whether by the legislation itself or in the form of conditions that will be put on exemptions, are more stringent than those available under the Land Agents, Brokers and Valuers Act.

For this reason, and also to avoid duplication of regulatory requirements, the Government is of the view that it is appropriate to leave regulation of the small proportion of agents and brokers who engage in mortgage financing to the Corporations Law. The requirements of the Corporations Law are designed for safeguarding the management of medium and longer-term investment schemes, of which mortgage financing is an example.

By contrast, the scheme of the Land Agents Brokers, and Valuers Act is directed towards safeguarding the short-term holding of trust moneys by agents and brokers in the course of completing real estate transactions. It is appropriate that the two quite distinct types of activity should be subject to different frameworks of control. In view of the existence of an appropriate scheme in the Corporations Law, it is no longer appropriate to graft on to the Land Agents, Brokers and Valuers Act a parallel scheme of controls to be applied specially to a small minority of agents and brokers.

As mentioned, the Bill provides that existing investors will retain their protection for the duration of their present loans to third-party borrowers. It is also relevant to a consideration of this Bill to note that the Government intends to prescribe a form of simple notice which agents and brokers will have to hand over to their clients if they are doing any mortgage financing business with them. This notice will emphasise to the client that that type of business will not be under the umbrella of the Agents Indemnity Fund. At an appropriate time, a public education campaign will also be undertaken by the Government. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short title. This clause is formal.

Clause 2: Commencement. This clause provides for the measure to be brought into operation by proclamation.

Clause 3: Amendment of s. 6—Interpretation. This clause removes the definition of 'mortgage financier' and inserts a new subsection (2a) intended to ensure that the definition of 'agent' does not, despite the removal of provisions relating to mortgage financiers, continue to extend the application of various provisions of the Act to persons carrying on mortgage financing business. The clause also removes subsection (6) as a consequential amendment resulting from the removal of the provisions relating to mortgage financiers.

Clause 4: Amendment of s. 62—Interpretation. Section 62 contains definitions of terms used in Part VIII relating to trust accounts and the Agents' Indemnity Fund. For the purposes of this Part, 'agent' is currently defined by the section as including a land broker, a mortgage financier and a person carrying on a business of a prescribed class. The clause removes the reference to mortgage financiers from this definition thereby excluding mortgage financiers from the application of the provisions of Part VIII, including the provisions relating to claims against the Agents' Indemnity Fund in respect of losses resulting from fiduciary defaults. The definition of 'trust money' is also amended by the clause to put it beyond doubt that references to trust money extend only to money received by an agent in the agent's capacity as such.

Clause 5: Repeal of s. 98b. Section 98b imposes certain obligations on a mortgage financier where the financier receives money on the understanding that it will be lent to a person on the security of a mortgage over land. The clause provides for the repeal of this section.

Clause 6: Amendment of s. 107—Regulations. This is a further consequential amendment removing the regulation-making power relating to mortgage financiers' operations.

Clause 7: Amendment of the schedule—Transitional Provisions. This clause adds to the schedule transitional provisions designed to ensure that the current provisions relating to trust accounts and the Agents' Indemnity Fund continue to apply in relation to—

- trust money received by a mortgage financier before the commencement of this measure; and
- trust money received by a mortgage financier (whether before or after the commencement of this measure) by way of payment of principal or interest, or both, under a loan made on the security of a mortgage before that commencement.

The clause also adds a regulation-making power for regulations to be made (on a transitional basis) requiring mortgage financiers to provide information to prospective investors or regulating or making other provision with respect to any other matter relating to mortgage financiers.

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

STAMP DUTIES (PENALTIES, REASSESSMENTS AND SECURITIES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 November. Page 1039.)

The Hon. K.T. GRIFFIN: I shall raise two issues in respect of the Bill, one which I doubt the Government has considered in respect of the broadening of the description or the redefinition of mortgage and the extension of liability to include contingent liabilities. It relates particularly to the mining industry, which is so important to South Australia. The other is related to conveyances and licences, particularly with respect to retirement villages, and I take this opportunity of raising the issue because the Bill is before us. It is a specific

problem that could well benefit from some specific advice from the Minister during Committee, particularly in view of the fact that the Commissioner of Stamps will be assisting the Minister to resolve issues on the Bill.

The first issue relates to the mining industry. Many joint venture arrangements provide for various participants to make cash calls from time to time in and towards an approved work program and budget for a particular year. The sums involved can be very large and, in order to secure the future obligations of the various participants, cross charges are granted by the parties over their respective interests in the joint venture project. One which immediately comes to mind is the Cooper Basin region, which, from public knowledge, is riddled with such joint venture arrangements and cross charges.

Of necessity, the charges must be of a contingent nature. In particular, they secure the rights given under the joint venture in relation to payments by each participant and the performance by each participant of its duties and obligations under the relevant agreement. Until now, those arrangements have been stamped at $4. The practice has been that, in the event that a default occurs, the charge is then upstamped to the appropriate sum and the defaulting participant's interest is taken over by the non-defaulting participants. It is very much a contingent liability. There is some doubt as to whether under existing stamp duty provisions there is a need to upstamp, but I understand that the practice is to do that, in any event.

Proposed section 79(2) appears to raise significant problems with this practice and it also seems that existing arrangements, as well as future arrangements, will be affected. The elements of subsection (2) are that, where a security extends to future or contingent liabilities and the liabilities are not limited to a particular amount, the security is chargeable with duty. There is no doubt that the cross charges which are entered into in the joint venture area certainly appear to be caught by the reference to a security, which extends to future or contingent liabilities. It is almost invariably the case that the liabilities in the cross charges are not limited to a particular amount. In those circumstances, the security is then chargeable under the Bill, as I interpret it, with duty.

In the first instance, the security is chargeable with duty on the basis of an estimate of the maximum amount to be secured, assuming in the case of a contingent liability that the contingency on which the liability is dependent will actually happen. If the liability subsequently exceeds the amount for which the security has been previously stamped, the security is chargeable as from the date when the liability is first exceeded with further duty calculated on the amount of the excess at the rate applicable to the excess. In the case of these resource cross charges, the contingency is that a participant, perhaps even all participants, will not pay their calls and, with respect to large joint ventures, we could be talking of tens of millions of dollars. If we add up all the joint ventures in South Australia, we could well be talking about hundreds of millions of dollars, perhaps even billions of dollars, and I suppose that only the Department of Mines and Energy would have some idea of that figure.

Existing securities appear to be caught by clause 30, which provides for proposed section 79(2)*(b)*. The problem which I flag for the Government to consider—and I do not believe it has been raised previously—is that there is a potential for a very substantial, unexpected cost burden to be imposed upon joint venturers throughout South Australia because the agreements contained within the cross charges are within the description 'contingent liability'. As I understand it, even from year to year, there is no clear indication of the amount that might be involved in a particular joint venture that varies from year to year. Joint venturers negotiate their programs on an annual or perhaps two or three yearly basis, and those programs depend upon the wishes of the joint venturers as well as the prospects in the area which is to be the subject of the exploration.

One has to recognise that the cross charges are really designed to guard against catastrophe and it is in that context that I express the view that I think it is unreasonable for them to be caught by the provisions of this Bill. I would like the Minister to indicate whether the assessment that I have made is correct and, if it is, to indicate whether this was within the contemplation of the Government at the time it was being prepared. If it was not, is it prepared to do anything now to ensure that that sort of joint venture and resource development within South Australia will not be prejudiced?

I do not believe that this liability is incurred in other States, but again the Minister may be able correct me if I am wrong. The difficulty is that if it is not in place in other States but is put in place in South Australia, so that it is an additional burden to resource explorers and developers, particularly explorers, it is a further disincentive to invest in South Australia. I think we ought to be removing those disincentives rather than adding to them.

The concern about retrospectivity is that, with all these cross-charges which are currently in place in a variety of joint ventures across South Australia, if the burden is now imposed on the arrangements which are in place it will be an unforeseen cost. If it applies only to future joint ventures that is a policy issue for the Government, which has to determine whether it is appropriate to impose this liability upon future joint venturers which will then become a disincentive. It is a policy decision in relation to existing joint venture arrangements and cross-charges, but it would seem to me to be inequitable that it should apply to arrangements that are currently in place.

As I understand it, the Government has addressed the issue in relation to other areas of contingent liability so that bill facilities and other financing arrangements that are currently in place are not likely to be the subject of the new provisions contained in this Bill. I think it is an issue which is important enough to focus upon in order that it can be resolved now rather than the furore arising at a later stage.

The other matter I want to raise relates to retirement villages, particularly to conveyance duty. I note that that is to increase on the larger transactions, as I understand it to compensate for the removal from the Bill of the Government's ill-conceived proposal to increase the 20c stamp duty on agreements to $10. That, as everyone knows, created considerable controversy, and all the agreements which previously people had not bothered to put a 20c adhesive stamp on came out of the woodwork.

Its impact upon ordinary citizens and small businesses in particular would have been quite dramatic. There was quite a vast range of agreements which I do not think the Government had had in contemplation but which would have created a very significant groundswell of opinion adverse to the Government if all those had been the subject of the duty.

In the light of the fact that the conveyance duty is to increase, it is appropriate to raise one issue relating to retirement villages; and it is a particular case which I think has in part been raised by individual retirement village unit occupiers in the past and which I think needs more careful examination.

The retirement village to which I refer is Langton Park. Because it is a new retirement village, it had some particular difficulties with the Federal Commissioner of Taxation. Those difficulties arose from the fact that the Federal Taxation Commissioner was developing and subsequently promulgating some general rulings as to how receipts from licensees of units and residences should be dealt with.

At one stage they were taken into account as capital but, as I understand it, the Federal Commissioner of Taxation moved to a position where all amounts paid by those who sought to gain access to particular units within a retirement village were to be treated as income.

In the formation of retirement villages, where they start from scratch, there were certainly not the deductions within an income tax year to set off against the income received from the acquisition of units. One could quite readily appreciate in the scheme of things that, if a person seeking to go into a retirement village paid $150 000 (as some do) for the right to occupy a unit, at some time in the future, some part, if not all, of that would be reimbursed to that person when that person ceased to occupy that unit and it was re-let to an incoming occupier.

In those circumstances it would be quite unreasonable in my view—nevertheless this is the view of the Federal Taxation Commissioner—to regard that amount as income. With Langton Park it was established in a way which sought to change the nature of that initial lump sum payment, from one of income for Federal tax purposes to capital by the establishment of a unit trust.

However, in establishing it on that basis, where the occupiers paid their money to gain access to particular units, they were issued with units in a unit trust as well as a licence to occupy. On the issue of the unit, whilst there was some discussion with the Stamp Duties Office, finally it was decided by the Stamp Duties Office that *ad valorem* duty should be paid on the capital value of that unit in the unit trust. This caught those who were moving into this new development by surprise, particularly when all their friends had been going into other units and were paying a mere $4 on the issue of a licence to occupy.

There has been some confusion because several of the unit holders have informed me that their inquiries at the Stamp Duties Office initially on production of the documentation indicated that they would pay only $4 on the unit certificate, but subsequently that was amended and some were paying $4 000, $5 000 or even more on the issuing of the unit in the unit trust and the right to occupy a unit in a retirement village.

I appreciate the technical reason why the Commissioner of Stamps has made an assessment of *ad valorem* duty. It follows some amendments that were made several years ago when unit trusts were being used to avoid the payment of stamp duty on the transfer of assets.

It is important to recognise that with this development at Langton Park Retirement Village all that unit holders and occupiers have is a licence to occupy, in effect, and, when they move out, they still have to wait some time for some refund to be made, and then they or their trustees, if they have died, take the money. So, it is effectively a reimbursement of the moneys which have effectively been loaned to the retirement village.

Quite obviously the promoters of the village were caught in a dilemma between the Federal Taxation Commissioner's treatment of the moneys which were paid in by unit occupiers on the one hand and by the problem of the stamp duties legislation on the other.

I would suggest it should not be beyond the wit of the Government to devise some appropriate mechanism for recognising that, whether it is a unit trust or whether it is some other form of retirement village, there is some merit in treating them all the same, so that the duty is on the licence to occupy and not expose the unit occupiers to the sort of duty which in their retirement years they can ill afford and for which many are worse off than previously in the context of their planning for retirement.

I raise that issue in the hope that the Government will look further at it. It may be possible to give some response today but it is an issue which is important and applies not only to this village but also to others which are being established for the benefit of retiring people in South Australia.

I should add that there is a specific exemption in the Act for licences for residential premises, as I understand it, and that is what again compounds the difficulty for those who have gone into this type of retirement village, because they believe that in the end they are in no different a position from those who merely have licences to occupy within a retirement village context. So, there does appear to be some inequity in the system and I would hope that it could be examined with a view to finding some reasonable solution for people in that situation.

Whilst the Bill is in effect an extension of a tax raising measure by the Government, there really is no option but for this to pass so that the Government can meet its budget commitments. I support the second reading.

The Hon. C.J. SUMNER (Attorney-General): I thank members for their support of the Bill. The Hon. Mr Davis indicated that the Bill was fairly well supported by the business community at large. That acceptance by the Opposition and by the business community and their support is welcome. The Government is appreciative generally of the level and quality of input given into draft taxation legislation by industry and association groups and specifically is appreciative of all the input into this Bill.

During the debate a number of references have been made to a lack of consultation. Generally on State taxation legislation, drafts of legislation are provided to and discussed with groups such as the Taxation Institute,

the Law Society, the Institute of Chartered Accountants and the Australian Society of CPAs. That consultation is acknowledged by these groups. On this Bill not all aspects were the subject of consultation but wide consultation took place on the penalty provisions and reassessment provisions for over a year.

Reference apparently was also made to a lack of consultation on stamp duty legislation in 1987. In fact, no stamp duty legislation was passed in 1987. The Hon. Mr Davis makes reference to comparative rates elsewhere in Australia for conveyance duty. The rate of 4.5 per cent for values over $1 million in South Australia compares with New South Wales, 5.5 per cent over $1 million; ACT, 5.5 per cent over $1 million; Northern Territory, 5.4 per cent over $500 000; and Victoria, 5.5 per cent over $760 000.

The Hon. Mr Griffin raised a point relating to cross charges in joint mining ventures and resource developments. The Government believes that this is covered by proposed section 79(5) since the Commissioner will have a discretion to permit the mortgage to be stamped for an amount less than the full amount.

Further existing situations are not caught by the new provisions by virtue of the transitional provisions in clause 45. In any event, I have asked the Commissioner to take up the issue with the mining industry.

The Hon. Mr Griffin also raised a point relating to retirement villages and in particular the Langton Park Retirement Village. These issues are well known to the Commissioner. However, it is the Commissioner's understanding that Langton Park has a unique structure which has resulted in stamp duty implications which other retirement villages have not experienced. However, the Commissioner is having discussions with people connected with Langton Park on the issue.

Bill read a second time.

In Committee.

Clauses 1 to 5 passed.

Clause 6—'Substitution of s.19.'

The CHAIRMAN: Of course, it is understood that any amendments are suggested amendments because this is a money Bill.

The Hon. L.H. DAVIS: I move the following suggested amendment:

Page 3, line 24—Leave out 'A statement affecting the liability of an instrument to duty' and substitute 'Any facts or circumstances affecting the liability of an instrument included in a statement under subsection (1)'.

This is simply a suggestion to improve the certainty of new section 19. I believe that the words proposed in the amendment go further than what we see there, and I would urge the Government to accept it.

Suggested amendment carried.

The Hon. L.H. DAVIS: The following amendment again seeks to broaden the wording which currently exists. I move:

Page 4, lines 11 and 12—Leave out 'a party to the instrument' and substitute 'another person'.

At present, anyone seeking to defend their position with regard to under-payment of liability in subclause 4*(b)* if that person is professionally engaged to have the instrument stamped is limited in their defence if they can show that they relied on information supplied by a party to the instrument. I believe that there are circumstances where they could reasonably have relied on information supplied by a person other than a party to the instrument. I do not think it is unreasonable to widen the defence clause that we are debating and, again, I would urge the Government to support this amendment.

The Hon. C.J. SUMNER: We cannot support this amendment. It is true that there are circumstances where the party to the instrument is not the person issuing instructions to the professional adviser engaged to have the instrument stamped. However, it is reasonable to expect the professional advisers to take every precaution and step to ensure that the information they are relying on is absolutely reliable. Subclause (4)(b) is drafted such that as long as the professional adviser is relying on written information supplied by the party to the instrument, then he/she will still have a defence. If the amendment was accepted, a professional adviser would be able to rely on a screen erected by getting instructions from a middle person without checking the adequacy of the information and then not be liable, and indeed the middle person would not be liable. If the amendment were accepted, it is quite possible that in certain instances certain professional advisers will always make sure that they do not accept instructions directly from the party to the instrument.

The Hon. M.J. ELLIOTT: The Democrats will not support the amendment.

Suggested amendment negatived, clause as amended passed.

Clauses 7 to 9 passed.

Clause 10—'Reassessment of duty.'

The Hon. L.H. DAVIS: Before I move my amendment, I would like to raise just one question in relation to the reassessment of duty. Proposed section 23a(1) provides that, where the Commissioner is of the opinion that a mistake has occurred in an assessment of duty under this Act, or that incorrect, misleading or incomplete information has been provided, the Commissioner may reassess duty payable under this Act. I refer particularly to proposed section 23a(1)*(a)* in which a mistake has occurred in an assessment of duty under this Act. If the mistake was made because the property had been stamped pursuant to an interpretation at the time which was correct but subsequently the Commissioner changes his view on an interpretation, does the Attorney see that as a situation which would be covered by proposed section 23a? I see it as inherently unfair that, if the party has had the stamping done pursuant to interpretation at the time, he should not be reassessed at a subsequent period if the Commissioner subsequently changes his mind, reassesses the duty payable and bills them for a higher amount.

The Hon. C.J. SUMNER: The Commissioner of Stamps says that the power would not be used in that way. In any event, he does not believe that the Act is such as to accord that power. He feels that a court would take a very dim view of an attempt by the Commissioner of Stamps to go back and collect past revenue where a court subsequently determined that they were making an incorrect assessment which was in favour of the taxpayer rather than the Commissioner of Stamps.

The Hon. L.H. DAVIS: Is the Attorney-General then assuring us that proposed section 23a will not cover a

situation where the Commissioner of Stamps subsequently changes his interpretation of an assessment at a subsequent time and attempts to reassess the duty payable?

The Hon. C.J. SUMNER: That is certainly the view of the Commissioner of Stamps and the intention that is trying to be achieved by this proposed section.

The Hon. L.H. DAVIS. I accept that the Commissioner of Stamps, in good faith, may not do that while he is the Commissioner but, of course, ultimately it is the legislation which will give the Commissioner the right to do what I am suggesting is possible and conceivable as the section is worded. I find it a very broad definition to say that, where the Commissioner is of the opinion that a mistake has occurred in the assessment of a duty, he has the ability to come back and reassess the duty payable under this Act. Who determines whether the mistake has been made? It is the Commissioner. What is the basis for a mistake? Who defines what is a legitimate mistake? I find it somewhat unnerving that we have such a broad provision. I am aware that stamp duty legislation is always particularly difficult to draft and that lawyers will find ways around it, as we have instanced with this series of clauses which are designed to overcome some of the gates that have been opened by intrepid and imaginative lawyers. But on this occasion—

The Hon. C.J. Sumner: What did you say?

The Hon. L.H. DAVIS: He said 'devious', I didn't.

The Hon. C.J. Sumner interjecting:

The CHAIRMAN: Order! The Hon. Mr Davis.

The Hon. L.H. DAVIS: I am just hoping that this is the last day. In this case, it is the Commissioner who can drive his cart and horse through this very wide provision.

The Hon. C.J. SUMNER: The Commissioner of Stamps advises that this clause has been the subject of much consultation going back over a year, including consultation with the Law Society and the Tax Institute, and that this was the phraseology agreed to. I am advised that the intention is to use it to correct errors of calculation. I do not know that this clause has been agreed to by all the parties who were consulted—the Commissioner of Stamps cannot say that—but nevertheless it is a clause that has been out and about for consultation with the groups I mentioned for some considerable time.

Apparently, at one stage the draft did say, 'where a mistake of fact has occurred', and I am advised by the Commissioner of Stamps that the lawyers advising the groups were not happy with that, so it came back to 'mistake'. Obviously, it is not intended to enable the Commissioner of Stamps, who has been operating on a particular legal interpretation for many years, suddenly to decide that that interpretation was a mistake and then to go back and collect all the tax that might have been paid pursuant to what he deems to be a mistake. Nor, if the court reinterprets the law such that more tax should have been paid, is it designed to enable the Commissioner then to go back and reassess all those past assessments that have been made because the court determined that the law that was applied to those assessments in the past was wrong. I suppose that the reverse would apply, whether it was to the benefit of the Commissioner of Stamps or to the benefit of the payer of the stamp duty.

I am advised that it is there to ensure that the Commissioner can correct mistakes of calculation in assessing the duty. It is not there to correct or to review a policy that might have been in place for years based on the Commissioner's interpretation of the Act.

The Hon. L.H. DAVIS: I remain unconvinced by the Attorney-General. I think that we understand what we are talking about, but I am not persuaded that the drafting covers adequately what the Attorney-General is saying. I would be far happier to have the clause deleted and for the Attorney to pursue it further. I suspect that he would not be satisfied that the matter he has addressed would be covered by section 23a(c), which provides:

> that a reassessment of duty is necessary in order to recover duty that has not, but should have been, paid;

That is, a mistake has been made and we had better reassess the duty. Is the situation the Attorney described covered by (c)? That is one option that he may consider. The other is that what he has precisely described as an 'error of calculation' could perhaps be inserted in lieu of the word 'mistake'. I am not unhappy with that, and I would be prepared to accept that as an amendment if the Attorney-General believes that it is appropriate drafting—'where the Commissioner is of the opinion that an error of calculation has occurred in an assessment of duty, the Commissioner may reassess duty payable under the Act'. I think that 'error of calculation' is a fairly precise description and is acceptable. It is a narrower, more precise definition than 'mistake'.

The Hon. J.C. Burdett interjecting:

The Hon. L.H. DAVIS: My colleague the Hon. Mr Burdett makes the point that a 'mistake', as set down in 23a(l)(a), could be a mistake of fact or of law. It is so broad as to be dangerous, and I dislike it.

The Hon. C.J. SUMNER: It seems as though we have three Parliamentary Counsel in here trying to tell Parliamentary Counsel how to do their job. As I understand it, this clause has been the subject of significant consultation with various groups and, although it is not necessarily agreed, they did complain when, for instance, 'mistake of fact' was the phraseology that was used. Parliamentary Counsel is not here—again—or the real Parliamentary Counsel is not here.

The Hon. L.H. Davis: There are four lawyers here.

The Hon. C.J. SUMNER: There are five, actually: the Commissioner of Stamps is also a lawyer. That is a real recipe for disaster, I tell you! We will be lucky to be able to agree on anything with five of us together. One other way out of this is to say that we will look at the clause subsequently, or we can put it off and see whether Parliamentary Counsel feels that there is some wording—

The Hon. L.H. Davis: I am happy to recommit and have 'error in calculation' in lieu of 'mistake'.

The Hon. C.J. SUMNER: I do not think that we ought to be Parliamentary Counsel, even though we are all lawyers, but, if we know the intention, perhaps we could discuss it with Parliamentary Counsel to see whether some satisfactory wording can be inserted. We will leave it there on the basis that I will recommit this clause of the Bill later.

The Hon. L.H. DAVIS: I accept that, and I thank the Attorney-General for his acquiescence in that matter. I move:

Page 5, lines 19 to 21—Leave out subsection (3) and substitute in lieu thereof:

(3) A reassessment of duty under this section must be made within three years after the date of the original assessment or such further period as the Attorney-General may, in a particular case, allow on the basis that fraud or deliberate evasion of duty appears to have occurred.

What we are doing here is shortening the time by which the Commissioner can reassess duty. Currently, the provision in the Bill provides that the Commissioner can have five years to reassess duty. We think that that is an unreasonably long period and we would like to see that amended to three years.

The Hon. C.J. SUMNER: The Government opposes this amendment. The provision in the Bill is consistent with the existing Income Tax Act Assessment Act provision, which provides the Commissioner of Taxation with a power to reassess within four years from the date of service of an amendment assessment (Income Tax Act Assessment Act, ss 170(1A)). In practice, because of the time taken in many cases before an amended assessment is both finalised and then served, this is often five to six years after the event in question. Additionally, where the Commissioner of Taxation is of the opinion that the avoidance of tax is due to fraud or evasion the Commissioner may reassess at any time (s. 170(2) of the Income Tax Act Assessment Act). The Commissioner of Stamps' power to make an assessment where there has been fraud or deliberate evasion can only be exercised where there is '...reason to suspect...'. If the Commissioner acted arbitrarily or capriciously then such action would be reviewable by the courts.

The Hon. M.J. ELLIOTT: The Democrats do not support the amendment.

Suggested amendment negatived.

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

Page 5—

Line 27—After 'overpaid duty' insert 'together with interest on that amount, from the date of payment of the duty, at the rate fixed under subsection (5a)'.

After line 27—Insert:

(5a) The Minister may by notice in the *Gazette*—

(a) fix a rate of interest for the purposes of subsection (5); or

(b) vary a rate of interest previously fixed under this subsection.

These amendments simply seek to bring some justice to the matter of duty which has been overpaid. We see throughout the principal Act and in the amendments in this Bill that if duty is paid late or underpaid there are penalty provisions. I think it is eminently fair then that if duty is to be decreased as a result of the reassessment—in other words, if someone has overpaid stamp duty—the Commissioner should not only refund the amount of overpaid duty but there should also be the ability to have interest attached to that overpaid duty. These suggested amendments are in line with the provisions which now exist in the principal Act.

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

Suggested amendments carried, clause as suggested to be amended passed.

Clauses 11 and 12 passed.

Clause 13—'Interpretation.'

The Hon. L.H. DAVIS: Can the Attorney-General advise whether the definition of 'rental business' as set out in clause 13 includes bills of sale, where for example a bill of sale is used as a security and the borrower retains the property which is the subject of a bill of sale? Is it intended that that situation would be trapped under this definition of 'rental business'?

The Hon. C.J. SUMNER: I am advised that it is not possible to give a definitive answer to that question. It depends on the nature of the bill of sale. They can be complex and do different things. If the honourable member wants to pursue the matter further I suggest that, as it is somewhat complex, he might want the opportunity to talk to the Commissioner of Stamps about his question. We will have to come back to clause 10 later, and the honourable member may care to identify more specifically in *Hansard* the issue on which he wants a response.

The Hon. L.H. DAVIS: I am happy to take up the matter with the Commissioner. This matter was raised with me only this morning by a major financial institution. Whilst I understand that rental agreements have been thrown into disarray with the recent Supreme Court decision in *Esanda Finance and Esanda Wholesale v Commissioner of Stamps,* nevertheless, we do need to know what we are agreeing to. I must say that I am slightly unnerved by agreeing to a definition of 'rental business' which actually provides, in the dragnet paragraph (d):

...but does not include business of a class exempted by regulation from the ambit of this definition.

This suggests that the area is so complex that we still really do not know what is going to be within the definition of 'rental business'. We do not know what is going to be outside this definition. I respect the Government's concern in this area, because it is trying to protect a revenue base of $12.4 million which has been exposed as a result of this Supreme Court decision only three months ago. I understand that the Esanda Finance case centred around floor plan financing and the various devices which have been created by lawyers, quite legitimately, to avoid being under the umbrella of stamp duty legislation.

I understand that discussions are going on between the Commissioner of Stamps and financial institutions to ensure that there is some consistency with the stamp duty treatment of floor plan finance. Is the Attorney-General in a position to advise the Committee as to whether or not the Commissioner of Stamps has made any progress in establishing consistent tax treatment for floor plan financing?

The Hon. C.J. SUMNER: Discussions are continuing. The amendment seeks to preserve the tax base and maintain the *status quo,* as we know. Some of the various industry groups criticised the proposed provisions during the consultation process as being too wide. Advice received by the Government from parliamentary Counsel has been very clear. The provisions must be drafted in their present fashion to ensure the present base is protected. A Government amendment moved in the Lower House gave a power to exempt by regulation, which can be used if necessary to deal with any unintended situation.

As the honourable member mentioned, one particular area of concern has been discussed at some length between the Australian Finance Conference, the Motor Trade Association and the State Taxation Office, namely, floor plan financing for motor dealers. Floor plan financing is the method of providing vehicles in the dealer's showroom and, by this technique, ownership remains with the finance company until the car is sold by the dealer to the customer. Currently, floor plan financing is being structured in different ways by the various finance companies and dealers in the industry. Consequently, different stamp duty treatment applies. I am advised that discussions are continuing between the various groups to ensure that consistent tax treatment will occur. Those discussions will be necessary, irrespective of the drafting of the provisions. I am advised that those discussions are continuing.

The Hon. L.H. DAVIS: I draw to the attention of the Committee an error on page 2, clause 4(8) at line 28. It should read, 'a person who contravenes or fails'. It is a typographical error.

The CHAIRMAN: We will make that clerical correction.

Clause passed.

Clauses 14 to 29 passed.

Clause 30—'Mortgage securing future and contingent liabilities.'

The Hon. L.H. DAVIS: This clause and those which follow deal with the anti-avoidance provisions. I will raise with the Attorney-General a general matter which is of particular concern to banking institutions. The Attorney may realise that, when a person borrows money, banks increasingly use what they describe as all accounts, all money clauses. For instance, if a person takes out a mortgage on a house, not only is the loan on that house secured by mortgage but it also traps other moneys which one may well regard as being unsecured, namely, credit cards, overdrafts and so on. When that mortgage comes to be discharged (let us say it is a $60 000 mortgage), an unsecured overdraft of, say, $5 000 might also be picked up by the all accounts, all money clause. Technically at least there is an argument that that should be included in the stamping when it comes to discharge.

It has been suggested by the bank with which I have been consulting that, in the event of a person having a $60 000 overdraft agreement, which may run out to $70 000 for a period and the bank is told about it, that may also mean technically that upstamping must be carried out to take into account the increase in limit. It is a complex area and I do not know whether the Attorney-General is prepared to follow this matter through. There is concern for certification purposes that banks may be in technical breach if this area is seen by the Commissioner of Stamps as being subject to stamp duty.

The Hon. C.J. SUMNER: I do not know that it is a problem. The bank has to make up its mind. If it wants those moneys secured, it has to pay the duty on them. If it does not, it does not have to worry.

The Hon. L.H. DAVIS: Although a credit card is by itself unsecured, as may well be an overdraft, when the bank enters into an arrangement for an all accounts, all money mortgage, it can be argued effectively that money is payable on what would otherwise be seen as unsecured borrowings. We all recognise that stamp duty operates only on secured instruments. What I am talking about now is what I understand is a fairly recent development in banking circles. An all accounts, all money mortgage means that, if an overdraft runs over the limit, and there is discharge of a housing loan with an overdraft that is attached to it, it could be argued that stamp duty should attach to those strictly unsecured borrowings, which have a flavour of security attached to them because of the nature of the agreement between the bank and its customer.

The Hon. C.J. SUMNER: The answer from the Commissioner of Stamps seems to be fairly simple—that is, that if one of those clauses picks up money owed under Bankcard or overdraft stamp duty has to be paid on it. If what is owed to the bank is secured by mortgage, as it may well be by the all-account, all-money clauses, it attracts stamp duty. It is not a problem as far as the law or the Commissioner of Stamps is concerned. If it creates a problem for the banks they have to decide whether they will adopt that practice.

The Hon. K.T. GRIFFIN: In his reply the Attorney-General did respond to my point that in the resource industry a cross-charge entered into between joint venturers could be the subject of discretion under proposed section 79(5). Is it the view of the Government and the Commissioner that these cross-charges in joint venture arrangements are liable to duty under these new mortgage security provisions?

The Hon. C.J. SUMNER: If they are secured over land they would be liable. The Commissioner says he has not seen one lately to assess, but that is the general principle.

The Hon. K.T. GRIFFIN: I suppose it then depends on what is an interest in land—whether an interest in a mining tenement is regarded as land. As I understand it, the cross-charges are entered into by joint venturers over the interest which other joint venturers have in the exploration lease, tenement or whatever. Is the Attorney saying that that falls within the description of land or is it excluded?

The Hon. C.J. SUMNER: It would fall under the definition of 'mortgage' if it was a charge over real or personal property or if it was a legal or equitable interest in or charge over real or personal property. So, it would be caught.

The Hon. K.T. Griffin: It was just that in your first answer you said 'land'.

The Hon. C.J. SUMNER: I am sorry; it is more than land. It is real or personal property.

The Hon. K.T. GRIFFIN: Can the Attorney-General say whether the impact of this extension to interests such as cross-charges in the resource industry in joint ventures is a matter to which the Government has applied its mind? If it has, does it accept that there is an additional liability imposed on joint venturers and is it prepared to wear the consequences of that?

The Hon. C.J. SUMNER: As indicated, there was wide consultation on these provisions. Nothing was put to the Commissioner of Stamps or the Government on behalf of the mining industry. So, we really have not had a chance to consider them. What I think I said was that I would ask the Commissioner to take up with them the issues that apparently are coming through the honourable

member from the mining industry. However, no concerns about these matters have been raised with us previously.

The Hon. K.T. GRIFFIN: I appreciate that that will now be pursued. In his reply at the second reading stage the Attorney also said that the Commissioner has a discretion under subsection (5). Implicit in his reply was the proposition that it may be under that discretion that these interests could be addressed. Can the Attorney indicate whether the exercise of the discretion in the sort of circumstances to which I have just referred would be on an individual basis, or would they be the subject of general rulings which would indicate the way in which the discretion would be exercised in respect of particular transactions or documentation?

The Hon. C.J. SUMNER: I am advised that the Commissioner of Stamps would look at a general ruling for an industry such as the mining industry so that everyone knew what the rules were.

Clause passed.

Clauses 31 to 43 passed.

Clause 44—'Amendment of second schedule.'

The Hon. K.T. GRIFFIN: I refer to the Langton park matter which I raised in the second reading, and I appreciate the Attorney-General's reply. Am I to understand from the reply that this issue of Langton Park and similar sorts of structures for retirement villages is something which both the Commissioner and the Government will be looking at to determine some equitable resolution of the distinction between the various structures for retirement villages?

The Hon. C.J. SUMNER: The Commissioner of Stamps has advised that he will be discussing the matter with Langton park and putting to Government some recommendations in relation to its problem. He believes that no similar arrangements are causing any difficulty; in other words, it is a problem that is unique to Langton Park.

The Hon. K.T. GRIFFIN: I appreciate the indication that that is the subject of some consideration by the Commissioner and that there will be some recommendations. All I can do is express the hope that they will be favourably disposed towards the occupants of units in this village.

Clause passed.

Clause 45—'Transitional provision.'

The Hon. K.T. GRIFFIN: In relation to the cross-charges in resource developments, the Attorney-General, as I recollect, said that the Bill would not adversely affect those joint ventures and cross-charges already in place. Is that a correct understanding of what the Attorney-General was saying?

The Hon. C.J. SUMNER: Yes.

Clause passed.

Title passed.

Bill recommitted.

THE FLINDERS UNIVERSITY OF SOUTH AUSTRALIA (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 November. Page 952.)

The Hon. J.C. BURDETT: The Opposition supports the Bill. I should declare an interest but it is certainly not a pecuniary one in that I am a member of the Flinders University council appointed by this Council, as is my colleague the Hon. Carolyn Pickles, and I am pleased to see that her name is on the speakers' list.

The amendments proposed by this Bill are concerned with internal administrative matters at the Flinders University of South Australia. Proposed changes to definitions in the Act will amend the definitions of 'students' and 'staff' so as to allow the council of the university to define the parameters of the four individual categories.

The existing provisions disfranchise part-time general staff and in the definitions extend the definition of 'university grounds' to include land that is owned or leased by the university or that is under its care, control and management. Under the current definition the university by-laws apply only to land in the Mitcham or Marion council areas.

Clauses 3 to 7 create several senior academic positions and propose changes to the size of the council's quorum from six to 12 and to voting procedures. The most significant amendment is contained in clause 8 and addresses the possibility of a deadlock between the council and the convocation of the university over the university's statutes and regulations.

Convocation currently has the power of veto of statutes and regulations made by the university's council. Flinders council believes that it and the University of Adelaide are the only two universities in Australia where a body such as convocation has the power to veto legislation referred to it by the council. Flinders council is given full responsibility for the day to day management of the university under the current Act.

However, in the event of a disagreement between council and convocation there is currently no means to resolve the deadlock and disputes could continue for extended periods of time. It also means that the statutes could just not be got through if the convocation continued to veto them or not give its consent.

I might add that the convocation at Flinders University consists of all graduates, whenever they graduated, and also graduates of any university who are on the staff of the university; it also includes the members of council at the time.

I understand that the total number of those people is about 27 000, that a quorum is 20, and that convocation is very lucky if it gets 80 at a meeting. So, it is not a very representative body to have this rather frightening power of being able to veto a statute proposed by the university council. Clause 8 removes convocation's power of veto of statutes and regulations made by the university council and provides for a negotiation process between the council and convocation. If agreement is not reached within the stated time limits the council may proceed to send the statute to the Governor for signature when it does have the force of law. Clause 8(2) provides:

> On making, altering or repealing a statute or regulation, but before submitting it to the Governor under subsection (3)—
>
> (a) The council must submit the statute or regulation to convocation and give consideration to any written comments forwarded by convocation within two months of receiving the statute or regulation;

and

(b) If the council, after consideration of those comments, modifies the statute or regulation but not so as to fully accord with changes suggested by convocation, it must submit the modified statute or regulation to convocation and give consideration to any written comments forwarded by convocation within two months of receiving the modified statute or regulation.

So, there is in regard to statutes a very real power given to the convocation. It does not take away their power altogether. There is that consultative process, and you, Sir, have heard that two periods of two months makes four months, of course. In practice, I suspect it would mean that the process would take about six months.

I might add that in regard to giving its reasons and that sort of thing the input of convocation is made more explicit in this Bill than it is at the present time. At the present time it does have that power of veto, but it does not have the explicit powers of input in the consultation process which this Bill has. While this does take away the power of veto it does give a meaningful and more specific role to the convocation in making its input in regard to statutes.

I suppose people may be concerned about the democratic process but, having regard to what I have said as to convocation, which is a meaningful body and has a real input in the university with its 27 000 franchise—more than a House of Assembly electorate—and the small numbers who usually turn up at meetings, that in my view is not democracy. The council is the governing body of the university and it should be able to send its statutes, after consultation with convocation, to the Governor for her signature.

So, the Bill does not detract from any real concept of democracy. On the other hand, it in many respects enhances the input of convocation or in general terms to graduates. It is ridiculous that the council at the present time does not have the ultimate say in regard to the statutes of the university.

There have been two recent examples, one resolved and one not resolved, of a deadlock between the convocation and the university council. The most recent example related to the so-called four school model to arrange the faculties and the control thereof within the university. After listening to debate throughout on that issue I agreed with the council, with the Chancellor and the position taken by her, and the council and I agreed about the whole process.

These recent problems are not the *raison d'etre* of the Bill. The underlying reason for bringing this Bill before the Parliament is that the potential for the convocation to frustrate the governing body of the university in the last resort in regard to statutes ought to be resolved. I do not think anyone should be misled into thinking that the issue to be dealt with during the Bill is the four school model because it is not. As the council sees it, the problem is that, unless the deadlock issue is resolved, there is a potential for it to occur at any time, and it ought to be resolved now. I support the second reading of the Bill.

The Hon. L.H. DAVIS: I join my colleague the Hon. John Burdett in supporting this legislation. Like my colleague, I have had a long standing interest and involvement with the Flinders University, having been a member of the university council for 11 years from 1979 through to 1990 and over the past five years having been a member of the Board of Governors of the Flinders University Foundation. It is important to recognise from the outset that the situation at Flinders University is rather unique. We have a convocation which means that Flinders University is one of only two universities in Australia where a convocation has a power of veto over changes in statute which have been referred to it by the university council. As we know, not only does that convocation have the power of veto but there is no existing means to resolve disputes between the council and convocation. Clearly, that is a bad defect.

The fact that, of the many universities and tertiary institutions in Australia, Flinders University, along with the University of Adelaide, is one of only two where a nineteenth century body—and that is the convocation—has a power of veto over statute changes that have been agreed to by the governing body of the council is an anachronism. I know there has been a lot of tension at Flinders University about this issue. There are two points of view, and it is always difficult to resolve a matter such as this. I have read arguments from both sides, but I do say that the overwhelming logic is in favour of the measures which are contained in this Bill.

If we recognise, as I said, that convocation is essentially a creature of the nineteenth century, it goes a long way to explaining the difficulties that we see at Flinders University. It is worth putting on record the fact that the convocation which, as my colleague the Hon. John Burdett has said, has a membership of about 23 500 members and is comprised of the graduates and staff of the university, has had annual meetings and occasionally special meetings in the past three years. But at the annual meeting in November 1989, 35 were present; at the annual meeting in November 1990, 39 were present; in 1991, 57 were present. A special meeting was held in 1990, which attracted only 35; another meeting was held in 1992 which attracted only 32. Then we saw the meetings of this year, which were involved in the controversy we are now debating, in which the numbers predicably increased: first, the special meeting in July attracted 87 attendees, and finally the very controversial meeting held in August 1992 attracted around 250.

So, even though the convocation membership is 23 500, possibly a few more, even though it is advertised locally, nationally and on the campus, attendance invariably has been poor. We must set down the role of convocation which, as I said, was a creature of the nineteenth century, alongside the role of the council, which is the governing body of the university. The council is a representative body, and that cannot be emphasised too strongly. It comprises not only the key administrators in the university but staff, and student union and employer group representatives. Outside members are elected to the Flinders University, along with representatives from both Houses of the South Australian Parliament and both sides of those Houses. It is a very representative body.

In recent times, motions which have been agreed to by the governing body have been blocked by the convocation. Certainly, the convocation has been acting within its rights, because it is empowered to approve or not approve changes to the statute referred by the council.

It is not authorised to amend statutes. It is not required to provide any reasons in support of its actions. But it has this blocking role. Of course, that is what has brought this matter to a head.

After all, a university, whilst it is an academic institution, also must be run on business lines. It must have an administrative framework which is capable of making decisions and implementing those decisions. I see in the structure of Flinders University this anachronism called a convocation which unfortunately has used the blocking role. It is no coincidence, I would argue, that, when the university of South Australia was established, quite recently, an amalgam of the institute of technology and the other colleges of advanced education, there was no provision for a convocation; there was no device that would give the convocation a blocking role for the University of South Australia. Indeed, the only other tertiary institutions amongst the dozens of tertiary institutions in Australia where a convocation has a similar blocking role is in the University of Adelaide, where, of course, it is called the senate. Why is it that Flinders University has a similar device to the senate of the University of Adelaide? It is because Flinders University was, in the first instance, the University of Adelaide at Bedford Park. So, it has been spawned by the University of Adelaide; it was sponsored by the University of Adelaide until it finally received the right to an autonomous existence through a legislative Act in 1966.

Whilst I respect the views of those people who have written and lobbied for another point of view believing there should be more consultation, more time given, in the matters which have been the sticking point time is of the essence and the Government has acted quite properly in introducing this legislation. The university has a right to be able to govern sensibly and to be able to enforce decisions made by the governing body. My great interest in the university in recent years has been, as I said, as a board member of the Board of Governors of the Flinders University Foundation.

The foundation, which has raised nearly $1 million recently to assist in the establishment of a law library with the opening of a new law school at Flinders in 1992, is also working closely with the developing alumni association. My point of view is that the future of the university rests not so much with the nineteenth century anachronism styled a 'convocation', a loose body of which the executive is not even defined by statute: the future lies very much in developing the alumni association, in developing the tradition and importance of the university in the community at large, and in building up support from its graduates and the community which it serves so well.

Flinders University has had a very proud record and, in fact, over the past decade has on a *per capita* basis had one of the most successful records in research grants of any university in Australia. I see the Bill before us as an opportunity for a further positive advance by the university, and I support the second reading.

The Hon. DIANA LAIDLAW: I, too, support the second reading. I believe that I am the only graduate of Flinders University in this place and possibly, for that reason, I should be declaring some interest in this matter, although I have mixed feelings about that, since it was only a couple of months ago when this matter was first discussed in shadow Cabinet that I learnt that there even was a convocation. It took me rather by surprise to learn that 23 500 of us are entitled to vote and to take part in the proceedings of the university. My general contact with the university is for money: it just wants money for various things, and I have always been pleased to contribute, because the years that I spent at the university were happy and rewarding. But the fact that I, as one who was entitled to vote, never received information about meetings and was never advised of matters to be discussed—

The Hon. Anne Levy: You are not on their mailing list?

The Hon. DIANA LAIDLAW: No, apparently, there is no mailing list and the matter is advertised, but they are not advertisements that I have ever noted.

Members interjecting:

The Hon. DIANA LAIDLAW: But to ask, you have to be aware, and I was never made aware that I was entitled—

Members interjecting:

The Hon. DIANA LAIDLAW: That was the case at Adelaide University. I do not ever remember receiving such correspondence from Flinders University and certainly never noticed the advertisements in the paper and elsewhere. However, I have no gripe about that, necessarily, although it does suggest that the system is open to manipulation, and I suspect that that is what has happened, notwithstanding the noble objectives of the convocation. I believe very strongly that, whether it be in business, the arts, education or health, any governing body, board or council responsible for management of an institution has the responsibility to manage and must be allowed to manage, otherwise, as we have learnt only too well in this place in debates in recent times about the

State Bank, if no-one is ultimately held accountable, the institution can get into all sorts of trouble.

I believe that, in the instance of the Flinders University, it is imperative that, as this institution goes towards the twenty-first century, the board elected and appointed to manage the affairs of the university must get on and do the job without the shackles of a rather archaic, albeit noble, institution such as the convocation.

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

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

PAPERS TABLED

The following papers were laid on the table:

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

Annual Reports 1991-92:

Country Fire Service

Commissioner for Equal Opportunity

Department of Mines and Energy

National Crime Authority.

Court Services Department, Annual Report 1991-92—erratum.

By the Minister of Transport Development (Hon. Barbara Wiese)—

Annual Reports 1991-92:

The National Road Safety Strategy

Occupational Therapists Registration Board

South Australian Psychological Board.

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

Annual Reports 1991-92:

Coast Protection Board

Department of Employment and Technical and Further Education

Department of Lands

Local Government Superannuation Board

South Australian Local Government Grants Commission

Outback Areas Community Development Trust

Planning Appeal Tribunal

South Australian Waste Management Commission.

LEGISLATIVE REVIEW COMMITTEE

The Hon. M.S. FELEPPA: I bring up the report of the Legislative Review Committee on the Courts Administration Bill and move:

That the report be adopted.

Motion carried.

The Hon. M.S. FELEPPA: I move:

That the Bill be recommitted to a Committee of the Whole Council on Tuesday 9 February 1993.

Motion carried.

JOINT COMMITTEE ON WORKCOVER

The Hon. T.G. ROBERTS brought up the Second Interim Report of the Joint Select Committee on the Workers Rehabilitation and Compensation System (WorkCover), concerning the review and appeal processes.

ENVIRONMENT, RESOURCES AND DEVELOPMENT COMMITTEE

The Hon. T.G. ROBERTS brought up the Third Report of the committee on supplementary development plans.

ROAD SAFETY

The Hon. BARBARA WIESE (Minister of Transport Development): I seek leave to make a ministerial statement concerning the National Road Safety Strategy.

Leave granted.

The Hon. BARBARA WIESE: In September of this year, the Federal Minister for Land Transport released the National Road Safety Strategy in Canberra. This strategy was developed by the Road Safety Group and endorsed by the Australian Transport Advisory Council (ATAC) at its meeting in April 1992. This strategy, which is aimed at reducing the number of lives lost and the extent of serious injuries on Australia's roads, gives a nationally unified sense of direction in road safety and provides a framework into which the strategic road safety plans of Federal, State and local governments, as well as those of other major stakeholders, will fit. It does not include a list of specific actions but rather seeks to be an umbrella document facilitating the development of road safety programs. It establishes goals, identifies priority areas, seeks coordination and involvement, and enables stakeholders to address their own issues and priorities. I have requested the Road Safety Advisory Council, the Road Safety Management and Coordination (ROSMAC) Group and the Department of Road Transport to review the document. I have also requested the Department of Road Transport to distribute the document to local councils, the Royal Automobile Association, and other appropriate bodies, for information. It gives me great pleasure to table this document in Parliament.

GOVERNMENT AGENCIES REVIEW GROUP

The Hon. C.J. SUMNER (Attorney-General): On 5 November I advised this Council that I had said that I wanted a full report to table in the Parliament on the Government Agencies Review Group (GARG), what happened with it and what it achieved and what are the on-going projects. I now seek leave to table a report on the Government Agencies Review Group program, dated November this year.

Leave granted.

MACHINERY OF GOVERNMENT

The Hon. C.J. SUMNER (Attorney-General): I seek leave to make a ministerial statement on the subject of machinery of Government.

Leave granted.

The Hon. C.J. SUMNER: In this statement, I wish to inform honourable members, and members of the South Australian public, of a series of Government initiatives designed to ensure the highest standards of integrity and accountability in the conduct of public and elected officials in this State. The public is entitled to expect high standards from all officials who are entrusted with the duties and obligations of public administration. Inquiries in South Australia have not found evidence of institutionalised corruption in the South Australian public sector and generally the South Australian public sector has maintained high standards.

Nevertheless it is important for legislative and administrative initiatives to be taken to ensure that these standards are maintained. Inquiries interstate, particularly in Western Australia and Queensland, have dealt with important issues relating to the machinery of government including the maintenance of high standards of integrity in the public service. These standards should apply across the board, to the legislature, the public service and to commercial statutory authorities such as the State Bank, which generally are managed by people recruited from the private sector. Yesterday I introduced a Public Corporations Bill to deal with the responsibilities of directors in Public Trading Enterprises and their

relationship to Government. Other initiatives include the following.

Legislative Measures.

Whistleblowers Bill. Today I am introducing a Bill providing for the statutory protection, from civil and criminal liability, of persons who disclose public interest information in the public interest. In addition the Bill will provide a remedy, via the mechanisms of the Equal Opportunity Act, from victimisation in employment. The protections set out in the Bill amplify the common law rights of whistleblowers without derogating from them. I indicate that the Bill applies both to the public and private sector. The introduction of the Bill is a culmination of the comprehensive anti-corruption strategy developed and implemented by this Government, and honours the undertaking in my ministerial statement to this House when I tabled the Final Report of the National Crime Authority on South Australian Reference No. 2 on 24 March, 1992 this year. Proposals for Whistleblower style legislation have been examined in Queensland by the Electoral and Administrative Review Commission and the Queensland Parliamentary Committee for Electoral and Administrative Review following the recommendations of Commissioner Fitzgerald in his Final Report. The issues have been also examined by the Commonwealth and New South Wales Governments, but the South Australian Parliament will be amongst the first in Australia to have before it a detailed and comprehensive Bill.

I indicate that a first draft of the Bill was made widely available for consultation, and the Government will not proceed with the Bill until the New Year so as to enable a further period of comment, consultation and examination of the Bill. I will deal in greater detail with the substantive contents of the Bill at the second reading stage.

Members of Parliament (Register of Interests) Act. The Government is also introducing a Bill which significantly tightens up the situations in which Members are required to disclose financial connections which could render a Member susceptible to potential conflicts of interest. The range of connections which will need to be disclosed is to be extended to cover all sources of financial benefits, irrespective of whether that benefit is derived as a result of a Member's employment, business activities or otherwise. In addition, the Bill will require Members who are involved in family companies and family trusts to make the same sort of disclosures about the family companies and family trusts as are required of Members themselves.

Disclosure of Electoral Expenditure. I inform the House that Cabinet has approved the drafting of amendments to the Electoral Act to provide for the disclosure of donations and electoral expenditure by candidates, Legislative Council groups, and other persons taking part in State election campaigns in South Australia.

Recent amendments to the Commonwealth Electoral Act now require that the total amount of funds received by federally registered political parties must be disclosed.

The source and size of all funds for all purposes must be included in annual returns to the funding and disclosure section of the Australian Electoral Commission. Accordingly, funds for the purposes of State elections are to be disclosed in the annual returns of registered political parties. The new provisions of the Commonwealth Electoral Act place no obligation on persons or organisations other than registered political parties to submit annual returns.

There are disclosure obligations upon independent candidates as for all candidates, but these disclosure obligations relate only to gifts and expenditure received and spent by candidates for federal elections. Candidates for State elections have no obligations placed on them in this area by the Commonwealth Act. Generally speaking, candidates for Federal elections must furnish returns setting out all gifts and all expenditure in relation to the election. There is no State legislation covering this topic. Thus the only disclosure required in respect of State matters comes from the annual returns of registered political parties which must be furnished to the Commonwealth Electoral Commissioner. New South Wales has similar provisions (as well as public funding) to those proposed by this Government, and the Western Australian Premier has announced the intention of her Government to legislate following the recommendations of the Western Australia Royal Commission Report (Recommendation No. 34).

Non Legislative Measures.

Public Sector Standards of Conduct. The need for public officials to be able to ascertain the standards which are expected of them has already been addressed by the Government's introduction of the Guidelines for Ethical Conduct for Public Employees and by the Code of Conduct for Public Employees, which were launched on 26 October 1992.

Code of Conduct for Members. This Parliament may consider that adoption of a code of conduct for its members would be an appropriate step to take. Certainly a clear perception exists, both in parliamentary circles elsewhere in Australia and in the community at large, that the standing of Parliament should be enhanced. One way of achieving this is by preparing a set of standards of conduct for members. The compilation of such a code has been recommended in Western Australia (Royal Commission 2nd Report), Queensland (EARC) and New South Wales (ICAC). The Government will prepare a draft and table it in Parliament in the new year. It will then be a matter for Parliament to consider, perhaps through its Standing Orders Committee or another committee of Parliament.

Ministerial Advisers. Ministerial advisers form another category of personnel who should be covered by clear guidelines about standards of behaviour and conflicts between personal interest and public duties. All ministerial advisers, including media advisers, are to be required to provide a declaration in the same terms as is required of members pursuant to the Members of Parliament (Register of Interests) Act. This will ensure that the Government is aware of situations where an adviser's views may be open to criticism as a result of a conflict of interest.

The Media. The Government notes that the member for Coles has introduced a Bill in another place dealing with declaration of interest by journalists. The Government will respond to that initiative when Parliament resumes, but is favourably disposed to greater disclosure provisions for those who have power to influence decisions.

Cabinet Handbook. In accordance with my earlier intimation to the Council (ministerial statement delivered on 25 August 1992 on the Worthington, QC, report on Minister Wiese), substantial work has now been undertaken on the preparation of a Cabinet handbook, including a detailed section on Cabinet Ministers and their duties. The 'Code of Conduct' section for Ministers deals with conflicts of interest, disclosure of facts and declarations in relation to pecuniary and non-pecuniary interests.

The Cabinet handbook will also lay down in a comprehensive way all the procedures pursuant to which Cabinet operates. The handbook will contain the following elements: the role of the Governor and Executive Council; the role and functions of the Cabinet Office; and Cabinet procedures, for example, circulation of Cabinet documents and security procedures, announcements of Cabinet decisions, implementation of Cabinet decisions, ministerial statements, green and white paper procedures, preparation of Cabinet documents, special instructions relating to particular categories of submissions, and preparation of legislation.

I inform the Council that the Cabinet handbook has been based on existing South Australian procedures and guidelines, many of which already exist in a number of separate documents but it will also include the best elements of work recently undertaken by the Queensland, Victorian and Commonwealth Governments. Further, Part II of the Western Australian Royal Commission into Commercial Activities of Government has very recently become available. Part II of the report makes recommendations in relation to the recording of Cabinet discussions and decisions, and the Government considers these matters require examination. Accordingly, although the Cabinet handbook is substantially completed, further revision and work of the draft guidelines will be undertaken in the recess, taking into account the recommendations of the Western Australian royal commission and other recommendations interstate. The completed handbook will now be made public and tabled in Parliament early next year.

Conclusion. This Government has previously addressed or has already set in train proposals for reform in almost all of the areas identified as areas of concern in Part II of the Western Australian Royal Commission into Commercial Activities of the Government. Nevertheless, the increasing complexities, rigour and demands necessarily involved in the governmental processes and public sector administration require that Governments be flexible, responsive and alert so as to protect and enhance our public institutions. This statement demonstrates the Government's commitment to ensuring integrity in Government institutions and its processes. A further statement will be made on these and related topics when Parliament resumes in February.

QUESTIONS

PETROLEUM FRANCHISE FEES

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Attorney-General, representing the Treasurer, a question on the subject of petroleum franchise fees.

Leave granted.

The Hon. DIANA LAIDLAW: I have received correspondence from the South Australian Manager of Ampol, Mr Wziontek, advising that a number of Ampol's customers have transferred sales interstate following the Government's decision in the August budget to increase petroleum franchise fees. From 1 October, fuel fees increased by 3c per litre (cpl) in zone 1, which is from 0 to 50 kilometres from the GPO, by 2c in zone 2 and by lc in zone 3, plus a levy to help pay for the proposed Environmental Protection Authority and a CPI adjustment. According to a memo which was issued by the Prices Surveillance Authority on 2 November outlining State and Territory Government franchise fees, the price for automotive distillate in Adelaide is now by far the highest of any capital city.

In fact, at 10.03 cpl, it is now 2.58 cpl higher than that of the next highest State capital fee of 7.45 cpl in Perth. The fees applying to other capitals are as follows: Sydney, 6.9 cpl; Melbourne, 7.71 cpl; Hobart, 6.11 cpl; Darwin, 6 cpl; Canberra, 6.57 cpl; and Brisbane, nil. From 1 January 1993, the differential between Adelaide and Melbourne will be even greater than the 2.86 cpl that applies at present. It will be 5.06 cpl when the Victorian Government reduces its fuel franchise levy by 2.2 cpl from 1 January.

When the increased fees were first applied in South Australia in October, the Liberal Party warned that the Government may not raise an additional $3.1 million in 1992-93 or $4.1 million in a full year because interstate hauliers, now using vehicles with long-range fuel tanks, would either boycott buying expensive fuel in Adelaide or would buy fuel in zone 3 areas of South Australia, which are 150 kilometres beyond the GPO, at 5.5 cpl, which is almost half the tax which applies in the Adelaide metropolitan area. It now appears that our forewarnings were well placed.

According to Mr Wziontek from Ampol, since 1 October when the new fees were applied, several major accounts have been lost interstate, although not lost to Ampol. The transport companies are continuing to purchase from Ampol but they do so in places other than the Adelaide metropolitan area. For instance, the management of a major Western Australian based transport company (I have been provided with its name) which operates between Western Australia and Victoria has advised all drivers and subcontractors not to purchase diesel fuel in Adelaide but to use Norseman in Western Australia, Ceduna in zone 3 of South Australia and Melbourne.

Another transport company based in Wagga Wagga has transferred its purchases to Yamba Roadhouse, which is also in zone 3 in South Australia, in preference to metropolitan Adelaide. An Adelaide-based transport company has decided that fuel that has been purchased in Adelaide to date will be transferred to Port Augusta, which is in zone 3, and Melbourne. I therefore ask the Attorney-General, representing the Treasurer:

1. How much did the Government budget to collect on a monthly basis this financial year from petroleum franchise fees in zones 1, 2 and 3?

2. Do the monthly fees collected to date reveal that the South Australian Government is out of pocket because its budgeted fees for zone 1 sales of 10.03 cpl have been replaced by either zone 3 fees at 5.5 cpl or no fees at all when the sales have been moved interstate, principally to Melbourne?

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

MEMBERS OF PARLIAMENT: DUAL CITIZENSHIP

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

Leave granted.

The Hon. C.J. SUMNER: I wish to inform members about the implications of the decision handed down by the High Court yesterday in the case of *Sykes v Cleary and Ors* on members of this parliament who may have dual citizenship. The High Court was asked to determine whether two candidates, both naturalised Australian citizens, were capable of being elected as members of the House of Representatives while, by operation of the law of Switzerland and Greece, they remained citizens of Switzerland and Greece respectively. On a preliminary view, the High Court's decision does not appear to apply to the South Australian Parliament. Section 44 of the Commonwealth Constitution provides:

> Any person who:
>
> (i) Is under any acknowledgment of allegiance, obedience, or adherence to a foreign power, or is a subject or citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power...
>
> shall be incapable of being chosen or of sitting as a Senator or a Member of the House of Representatives.

The High Court interpreted this provision as requiring a candidate who is an Australian citizen and also a citizen of a foreign country by operation of the law of the foreign country to take reasonable steps to renounce that foreign nationality. What amounts to taking reasonable steps, said the High Court, will depend on the circumstances of the case. What is reasonable will turn on the situation of the individual, the requirements of the foreign law and the extent of the connection between the individual and the foreign State of which he or she is alleged to be a subject or citizen. There is nothing in the South Australian Constitution which directly parallels section 44(i) of the Commonwealth Constitution.

Section 2a of the Electoral Act provides that a person is entitled to be enrolled as an elector if he or she:

(a) has attained the age of 18 years;

(b) is an Australian citizen (or British subject enrolled in 1983);

(c) lives in a subdivision; and

(d) is not of unsound mind.

Section 52(1) provides that a person is not qualified to be a candidate for election as a member of the House of Assembly or the Legislative Council unless he is an elector. Section 31 of the Constitution Act 1934 provides:

> If any member of the House of Assembly—
>
> [(a) is not relevant]
>
> (b) takes any oath or makes any declaration or act of acknowledgement or allegiance to any foreign prince or power,
>
> (c) does, concurs in, or adopts any act whereby he may become a subject or citizen of any foreign State or power; or
>
> (d) becomes entitled to the rights, privileges, or immunities of a subject or citizen of any foreign State or power;
>
> his seat in the Council shall thereby become vacant.

Section 17 similarly provides for vacation of Legislative Council seats but interestingly enough section 31(d), which relates to House of Assembly members, for some reason does not apply to the Legislative Council, members will be pleased to know.

Members will note the difference between these provisions and section 44(i) of the Commonwealth Constitution. That section provides that any person who is under foreign allegiance is incapable of being chosen or of sitting as a Senator or a member of the House of Representatives—and I stress that it is a person who is under foreign allegiance.

In contrast, the South Australian provisions apply only to persons who are members of the Legislative Council or House of Assembly, and a member's seat becomes vacant only if the person while a member pledges allegiance to a foreign power or does, concurs in, or adopts any act whereby he may become a subject or citizen of any foreign State or power or becomes entitled to the rights, privileges or immunities of a citizen of a foreign state. The member must take some positive action.

As I have said, on this preliminary view of the matter the High Court decision does not apply to this parliament. However, I am undertaking further examination of the issues and should it be necessary the Government will introduce a Bill to ensure that the seats of Australian citizens in this Parliament are not in jeopardy. It would be wrong that, because of the laws of another nation, the rights of Australian citizens to represent their fellow citizens in this Parliament could be put in doubt.

RETIREMENT VILLAGES

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Minister of Consumer Affairs a question about retirement villages.

Leave granted.

The Hon. K.T. GRIFFIN: The Minister now has responsibility, as I understand it, for the Retirement Villages Act. I have had some discussions with the South Australian Retirement Villages Association, which has expressed concern about the delay in the next stage of recognising residents' rights and the apparent change of direction of the Government in the mechanisms for the protection of residents' rights.

A Retirement Villages Review Committee (chaired by Mr Lange Powell) met regularly throughout 1991, and that comprised not only Government appointees but also representatives of both residents and owners. A report was presented to Dr Hopgood and the then Minister of Consumer Affairs in January 1992.

There were, as I understand it, significant measures of agreement between the association and owners in relation to the rights of residents, although the refund of licence fees was still a contentious matter, and I understand that it in fact remains somewhat contentious. Some legislative proposals were reported on. What disappoints the association is that there was no consideration of the January 1992 report for some eight months. That association says that it and its members have been working for some three years seeking action to protect tenure but, more particularly, to recognise the rights of residents of retirement villages.

In August 1992 a newly formed advisory committee, for which I understand the Department of Public and Consumer Affairs is responsible, met and there was a marked change in emphasis. The focus then was directed to a code of practice for retirement villages. That concerns the association, which says that such a code is general and not specific and gives them no cause for confidence that their rights will be enhanced.

In fact, they say that during the consultations with the Retirement Villages Review Committee they were always led to believe that ultimately there would be legislation which would entrench clearly the rights of residents. A number of issues remain unresolved. I ask the Minister the following questions:

1. What now is the Government's focus for the recognition and protection of residents' rights?

2. Can the Minister indicate the timetable for any action in relation to recognition of those rights?

The Hon. ANNE LEVY: I can assure the honourable member that the Government remains committed to reform in this area and in no way resiles from that fact. There are several matters which, as the honourable member indicated, remain for further discussion and resolution. Only recently I discussed these very fully with representatives from the Retirement Villages Association. One particular matter that the honourable member raises is the question of a code of practice which has been claimed to be fairly general and not specific (to quote the honourable member).

I think this reservation about a code of practice comes from certain codes of practice which exist in other States and which certainly are general and not specific, but there is nothing whatsoever to say that a code of practice must be general and not specific. On the contrary, a code of practice can be as specific as one wishes to make it.

It would be our view that any code of practice would not be couched in vague generalities but would quite definitely give specific rights to people in retirement villages. It was pointed out in our discussions that a code of practice incorporated as a regulation under the Bill would be quicker to bring into operation as it could be done fairly rapidly and, furthermore, would provide greater flexibility for any alterations to it which were found to be necessary at any stage. Also, a detailed code of practice adopted as regulations under the Act would give a great deal of protection and could be achieved fairly rapidly.

I agree that there are still other points of disagreement between owners, managers and residents of retirement villages. Following my meeting with the Retirement Villages Association I understood that discussions were to be held which previously had been very difficult to achieve, as some members of the two parties did not wish to meet with the others.

However, it is hoped that sensible discussions can occur with the aim of resolving certain difficulties which still remain. Obviously reforming legislation cannot be introduced before the Christmas break. I would be pleased if it was possible to introduce legislation during the autumn session. I do not want to promise it at this stage, because the outcome of various discussions still occurring are, of course, as yet unknown. It would obviously be preferable to achieve a consensus before legislating in a contentious area where the various parties have not been able to reach agreement. I hope that will not be necessary and that before very long legislation can be brought in.

The Hon. K.T. GRIFFIN: As a supplementary question, can the Minister indicate whether or not a draft code of practice is yet available ?

The Hon. ANNE LEVY: I have not seen a draft code of practice. I am sure there has been work on it, but I do not know that it has reached a stage of being other than a series of dot points. I will certainly inquire whether it is far enough advanced at this time, but to my knowledge it has not quite got to that stage yet.

JOURNALISTS

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Attorney-General a question about the declaration of interest by journalists.

Leave granted.

The Hon. R.I. LUCAS: In one of his ministerial statements under the heading of 'The Media', the Attorney-General said:

The Government notes that the member for Coles has introduced a Bill in another place dealing with declaration of interest by journalists. The Government will respond to that initiative when parliament resumes but is favourably disposed to greater disclosure provisions for those who have power to influence decisions.

When one looks at the power of journalists to influence decisions, one can consider a whole category of journalists and not just those journalists who report in Parliament. Certainly, there would be a powerful case if one went to New South Wales to talk show hosts such as John Laws. I think he has had some influence in the Federal Caucus recently.

Certainly in South Australia we have significant talk show journalists: Keith Conlon and others on the ABC; Bob Francis in another way on 5AA; and Ray Fewings and others who are journalists with significant power to influence decisions.

Equally, when one looks at the print media, one sees that it involves not just those journalists who are accredited to Parliament House but also, certainly, editors in relation to the leading articles in the newspaper. The Attorney-General has often referred to the ability or the power of the *Advertiser* in particular to get things either right or wrong on various issues, and certainly their power to influence decisions. One could go down from the editor level to sub-editors and journalists who are not necessarily accredited at Parliament House.

I am interested in the curious language that the Attorney-General has used in his considered ministerial statement, where he says, 'The Government is favourably disposed to greater disclosure of provisions for those journalists who have power to influence decisions.' There is no reference to journalists who perhaps are accredited or registered at Parliament House, a matter that is certainly the subject of debate in another place.

Given the considered nature of the Attorney-General's ministerial statement and the deliberate choice of words that he has used, I refer to the Government's view that 'it is favourably disposed to greater disclosure provisions for those who have power to influence decisions'—referring only to those journalists who may be accredited or registered in some way to cover the proceedings of Parliament, and that is a small number of journalists. Does this mean what it says: all journalists who have the power to influence decisions such as talk show hosts and perhaps those editors, subeditors and other journalists who might work in the print media and in the electronic media but not those who are formally accredited or registered at Parliament House?

The Hon. C.J. SUMNER: In fact, it was a general statement that applied to everyone. Obviously, the question whether there should be disclosure of interests relates to disclosure by people who exercise authority and power and who have the capacity to influence public administration or public policy in the case of a journalist. So, the phrase really is just a statement of general principle, which backs up the reason for the declaration of interest provisions which operate in this Parliament, for chief executive officers and others in the public sector, and for Ministers.

We now have the member for Coles introducing a Bill in another place specifically dealing with a declaration of interest of journalists related, I understand, to some system of accreditation to the Parliament. That is a matter that the Government will consider in due course, but we have not made a decision on it. It has not been formally considered by Government in this or another place as to whether or not we should support the Bill. However, we will certainly examine it. We note it in this ministerial statement and we merely make the general statement that, whether journalists or otherwise, the general principle in favour of disclosure is that it should relate to those who have power to influence decisions.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: I am not going to make any statement about it at this stage, Mr President, beyond what I have said. The general principle is that, whether journalists or otherwise, the principle of disclosure of interests relates to people who have power to influence decisions. That is the Hon. Mr Lucas and others. It may be journalists in some circumstances; it may be Ministers; or it may be public servants or others who have responsibilities to make decisions. That is just a general statement. It is not meant to pre-empt a decision that the Government might take about the Bill introduced by the member for Coles. However, we do note it. We note that it relates to declarations of interest; we note that the Government is also going to introduce a Bill to upgrade the declaration of interests for members of Parliament, and in that context we will consider the Bill that has been introduced by the member for Coles.

ABORIGINAL HOUSING

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Minister of Housing a question about the Aboriginal Housing Board.

Leave granted.

The Hon. M.J. ELLIOTT: In December 1991 a review steering committee presented a report on the Aboriginal Housing Board to the Minister of Housing. It was released for public consultation in February 1992. The board itself was extensively involved in the consultation process and was supportive of the review proposal that an aboriginal housing statutory authority be created within the State's housing portfolio. The review steering committee considered all responses to its original report and sent a second report to the Minister in September. I will continue by quoting the following letter that was sent by the Aboriginal Housing Board to all South Australian Aboriginal community organisations and members:

> We understand that this report supported a statutory authority in principle, and recommended an interim amalgamation of the AHB secretariat and the South Australian Housing Trust Aboriginal Housing Unit under a board reporting directly to the Minister of Housing. We want to make it clear that the board requested the review, welcomed the review, and cooperated fully with it. The Minister specifically thanked the board for our assistance. Now after 108 months, with no consultation and no communication, Ministers Mayes and Crafter have stopped the review recommendations going to Cabinet. Instead, Cabinet has agreed to the Minister's proposal to move responsibility for Aboriginal Housing to Aboriginal Affairs. This option was not mentioned in the review, or recommended by anyone responding. The effect of the Minister's proposal will be to split the Aboriginal housing program between two departments, one of which is responsible for policy and the other for service delivery. This is seen by those who contacted me as a move towards a more bureaucratic and less community based structure, a move contrary to the results of the review's community consultation. When they spoke to me this morning, they told me that this will destroy the integrity of the Aboriginal Housing Board, and that has been the only way Aboriginal people have had to participate in the running of the Aboriginal housing program. My questions to the Minister are:
>
> 1. What message does the Government's complete disregard for the review outcomes send the Aboriginal people of South Australia?
>
> 2. What are the perceived benefits of the plan to wipe out a community-based Aboriginal housing organisation and split the running of the housing program between the two arms of the bureaucracy?

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

STATUTORY AUTHORITIES

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Attorney-General a question about statutory authorities.

Leave granted.

The Hon. L.H. DAVIS: On 8 August 1984, over eight years ago, I asked the Attorney-General whether the State Government would consider consolidating and publishing information relating to statutory authorities in South Australia, including the names of members of committees or boards, the duration of their appointments, the remuneration paid, the number of meetings held and the date of publication of annual reports. I pointed out that there was no one source for basic information for the then 270 statutory authorities and no consolidation of that information. On 18 September 1984, the Attorney-General replied stating:

The Government is giving consideration to establishing a system which can provide such consolidated information.

However, since 1984, the Government has failed to act in any way on this important matter. Almost every year since 1984 I have complained about late reporting by statutory authorities. An examination of annual reports of Government agencies shows that 1992 is a high point in late reporting by Government agencies.

Section 8 of the Government Management and Employment Act 1985 requires Government agencies—and we include, of course, in that administrative units and State instrumentalities—to report to the relevant Minister within three months of the end of their financial year, which is invariably 30 June. The Minister is then required to table that annual report within 12 sitting days of the end of that three month period, namely, 30 September. For agencies reporting on a financial year basis, the last day by which a Minister could table an annual report in 1992 and still comply with the legislation would be 5 November. Because there is no consolidation of statutory authorities, it is a time consuming and difficult task to establish whether agencies are obliged—

The Hon. C.J. Sumner: The Act does not apply to statutory authorities.

The Hon. L.H. DAVIS: Well, it doesn't apply to statutory authorities, but it is within the spirit of what the Government has said on more than one occasion, that the GME Act is taken as a benchmark and that statutory authorities which are obliged to report should do so within that reasonable period. Because there is no consultation of statutory authorities—

The Hon. Anne Levy interjecting:

The PRESIDENT: Order!

The Hon. L.H. DAVIS: —it is a time consuming and difficult task to establish whether agencies are obliged to report and whether they have reported. I obviously take this question a little bit more seriously than some of the Ministers who are under attack in this question.

The Hon. Anne Levy: I take it very seriously.

The PRESIDENT: Order! The Hon. Mr Davis.

The Hon. L.H. DAVIS: You just listen and you will be appalled at this information.

The Hon. Anne Levy: I am appalled.

The Hon. L.H. DAVIS: Right! Well, you just stay tuned. However, an examination of agencies, which have reported after 5 November, reveals that 29 reported after the due date. This includes the Department of the Premier and Cabinet, which reported on 6 November—hardly a good example of a key department setting a standard for other agencies. The Attorney-General's Department, the Department of Personnel and Industrial Relations, the Department of State Services, the Commissioner for Consumer Affairs, the Industrial and Commercial Training Commission, and the Department of Marine and Harbors are just some of the major agencies which did not report on time.

As far as I can ascertain, as many as 50 agencies have not reported as of yesterday, Wednesday 25 November—20 days after the due date. However, as I mentioned, it is difficult to establish this figure with accuracy because the Government agencies in South Australia remain a dog's breakfast. It appears that the Department of Labour, the Department of Lands, the Department of Employment and Technical and Further Education, the South Australian Waste Management Commission and the WorkCover Corporation are among major agencies which have not reported as of yesterday. It is appalling that the mandatory requirements of the Government Management and Employment Act are being flouted by dozens of important Government agencies. Reporting standards appear to have slackened rather than improved, despite Opposition complaints over recent years and increasing community pressure demanding improved standards for corporate behaviour.

Quite clearly, the later the report the less relevant becomes the information, and the less likely any major areas of immediate concern can be properly addressed in the Parliament. The Attorney-General would be well aware that such lax reporting would not be tolerated in the private sector. Adelaide Brighton, S.A. Brewing and F.H. Faulding—all South Australian companies—have reported for the financial year ended 30 June, as required by the Stock Exchange, and indeed many of these major companies have already published annual reports which have been distributed to tens of thousands of shareholders, and they have already held their annual meetings.

The Liberal Party has been raising concerns about this important area of statutory authority reporting for over eight years but nothing whatsoever has been done to address these concerns. I have four questions for the Attorney-General:

1. Will the Attorney-General take up the matters, which I first raised over eight years ago, to provide consolidated information on statutory authorities and to ensure that statutory authorities report on time? If I took a lead from what he said in the spirit of defence in relation to the State Bank debate, I might have made more progress if we had discussed this over tea and biscuits rather than raising it in the Council.

2. What action, if any, does the Government take against statutory authorities that have not reported by the due date?

3. What mechanisms exist to ensure that statutory authorities report by the due date?

4. Will the Attorney-General provide at the earliest opportunity the names of all statutory authorities which are required to have annual reports tabled in Parliament but which have not done so as at Thursday, 26 November?

The Hon. C.J. SUMNER: As the honourable member knows, I have just taken up a new portfolio in the Arnold Government as Minister of Public Sector Reform, and these are issues which relate to that, in a general sense at

least. I am happy to examine the matters raised by the honourable member and bring back a reply.

HOSPITALISATION AND SURGERY RATES

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister representing the Minister of Health a question about high hospitalisation and surgery rates.

Leave granted.

The Hon. BERNICE PFITZNER: The Social Development Committee's first report has identified high rates of hospital admissions and surgical procedures. In relation to hospitalisation in 1988-89 the hospital admissions rate was 19.6 per cent higher than the Australian average. The Health Commission stated that South Australia had more beds per head of population and that it has more medical specialists and general practitioners. Some reports have linked the availability of beds and medical practitioners with the increase in hospitalisation. The Health Commission notes that it is not possible to conclude that the State's high admission rate 'is not inappropriate'.

In relation to surgical procedures, South Australia has the highest rates for tonsillectomy and cholecystectomy and a relatively high rate for hip replacement and caesarean section. The Health Commission reports that a working party was unable to explain these elevated rates of surgery. It was also identified that the Elizabeth council area—a Labor heartland—had a surgical procedure rate which was significantly higher than the rest of the metropolitan average. I note that the Social Development Committee recommends that investigations be made on these findings. My questions to the Minister are:

1. Why has the Health Commission not been able to give any indication as to what may be the contributory causes of the high hospital admission rate and the high surgical rate?

2. Since these trends have been known for years—some for 10 years—has the Health Commission an evaluation program in place to provide statistical information as to the possible cause of these undesirable effects?

3. What significant results and recommendations, if any, did the working party of the Health Commission come to on the investigation into the elevated rates of surgery?

4. It is known that Elizabeth council residents are perhaps socially disadvantaged; why then, with this Government's social justice policy, has Elizabeth suffered this further disadvantage of having the highest hospital and surgical procedure rates?

The Hon. BARBARA WIESE: The information to which the honourable member refers has come from the bipartisan parliamentary committee, and I think that members would agree that this, the first report of that committee, makes an important contribution to the debate concerning social development within South Australia. I know that the Minister of Health, Family and Community Services is very interested in the findings of the committee in this matter and very keen to take up some of the issues that have been raised by the committee with a view to taking appropriate action wherever that may be possible on the numerous issues that were outlined in that report. I am aware that the Minister of Health, Family and Community Services already has a copy of that report and is planning to take up the appropriate issues, and I will refer the additional questions that have been raised by the Hon. Dr Pfitzner for his attention.

CHECKOUTS

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Consumer Affairs a question about electronic computer checkouts.

Leave granted.

The Hon. J.C. BURDETT: I do not expect the Minister to be able to answer this question off the top of her head. Electronic computer checkouts were first introduced into South Australia during the period when I was Minister of Consumer Affairs, and their introduction was fairly strongly attacked by the then Opposition, largely by the present Attorney-General.

The Hon. C.J. Sumner interjecting:

The Hon. J.C. BURDETT: You did: there is no doubt about that. There were questions to be addressed.

The Hon. C.J. Sumner interjecting:

The Hon. J.C. BURDETT: Yes: look at *Hansard.* I introduced into the Standing Committee of Consumer Affairs Ministers (SCOCAM)—

The Hon. C.J. Sumner: Under pressure from me.

The Hon. J.C. BURDETT: Under pressure from no-one, but probably partly prompted by the Attorney-General, who previously denied any connection with it—

The Hon. R.I. Lucas: Trying to have the best of both worlds.

The Hon. J.C. BURDETT: That's right, but never mind. A working party was set up, chaired from South Australia. Ms Marilyn Meek, the Chief Project Officer of the Department of Public and Consumer Affairs chaired that working party—

The Hon. ANNE LEVY: On a point of order, I am afraid that there is so much audible conversation that I cannot hear the question the honourable member is addressing to me.

The PRESIDENT: I could not agree with you more. There is a point of order: the Council will come to order.

The Hon. J.C. BURDETT: Thank you, Sir, because I do want the question to be answered at some time, not necessarily off the top of the Minister's head, but at least she will have the chance of reading what I said in *Hansard*—assuming that *Hansard* could hear it—and be able to answer the question.

The Hon. Anne Levy: *Hansard* is having a lot of trouble, too.

Members interjecting:

The PRESIDENT: Order! The honourable Minister will come to order.

The Hon. J.C. BURDETT: The problem I raised at that time was as to the accuracy of electronic computer checkouts. The first question I raised was that of unit pricing, as to whether it was necessary to provide in legislation that prices had to be placed on the units on the shelves. It is my observation that that, in fact, has happened. I always find the prices placed on the units on

the shelves. The next question was whether that was accurate when it came to the computer checkout, whether the prices were the same, and as to the kind of information one had on the checkout slip, as to whether or not that was useful.

After 10 years and more of the system, it has been my observation that the system has, in fact, operated successfully. I do not hear many complaints, although I do hear the odd one about where an item price on the shelf does not check out or whether the list one gets is wrong but, generally speaking, my observation is that the operation does function smoothly. My questions to the Minister are:

1. Are there many complaints about the operation of the system?

2. Does the department receive many complaints? If so, what is the sort of quantity and what is the nature of the complaints?

3. Do the Minister and the department consider that, generally speaking, the system operates fairly effectively and to the benefit of consumers?

The Hon. ANNE LEVY: As the honourable member said, I am afraid that I do not have those data immediately available. Certainly, I will seek them from the department so that I can provide the honourable member with accurate figures. My impression is that the number of complaints is very low and that the system does seem to function pretty well. Of course, there are penalties for retailers when errors are found or when the price coming up at the counter differs from that on the shelf. In general, the system seems to work fairly smoothly and the level of complaints is pretty low, but I will obtain detailed information and hope to let the honourable member know in the weeks before we meet again.

RUNDLE MALL

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Minister for the Arts and Cultural Heritage—although I am not sure to whom it should be redirected—a question about Rundle Mall.

Leave granted.

The Hon. J.C. IRWIN: There has been a fair amount of public debate about Rundle Mall, its future impact on the centre of the city of Adelaide and on shopping in South Australia generally. Last weekend's *Sunday Mail* had the following to say:

Rundle Mall has turned sweet 16. However, her blossom is starting to wilt. And major retailers agree she needs a facelift and a change of thinking, including Sunday trading and the provision of adequate public transport. The mall's share of the retail dollar has dropped from 28 per cent to 21 per cent in recent years, with the rest going to suburban centres where car parking is free and accessible and people shop in air-conditioned comfort all year round. Now, Adelaide retailers are eyeing the Queensland experience where dynamic marketing and a commercial vision is winning people back into the city centre and its spotless showpiece, the Queen Street Mall.

An accompanying article headed 'Brisbane is our Blueprint' has this to say:

During a 50-hour sales period in June, the head count was no fewer than 560 000 shoppers. Rates to the council have risen from $7 million 10 years ago to $27 million today. And property values there have skyrocketed 700 per cent in that period.

I am advised that the Adelaide City Council at a meeting this month has increased its on-street parking charges from 40c per unit time to 60c per unit time. That is a 50 per cent increase, to apply from 4 January 1993. 1 ask the following questions: does the Minister agree that the lifting of parking fees by 50 per cent for the City of Adelaide will not be conducive to attracting people back to the city centre? Also, does the Minister agree that to match suburban shopping centres the Adelaide City Council needs to consider free parking and a call for the provision of adequate transport?

The Hon. ANNE LEVY: I think the appropriate Minister to whom that question should be referred is the Minister of Local Government Relations. I would point out that there is in existence a statutory Rundle Mall Committee, which has a majority of members from the Adelaide City Council. There are Government representatives, but the clear majority on that committee comes from the Adelaide City Council. So I think the workings of Rundle Mall are far more a matter for the city council than the Government. The honourable member discussed transport and when he got to parking I knew that it was a question for me. In a lighthearted vein, Mr President, the Hon. Mr Irwin could not let a day pass without a mention of parking; I am delighted that he has maintained that pleasant tradition. However, I will refer the question to my colleague in another place so that if he feels he is able to contribute to this discussion, as opposed to the Adelaide City Council, he will be able to do so.

REPLIES TO QUESTIONS

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

Leave granted.

TERRACE HOTEL

In reply to **Hon. L.H. DAVIS** (21 October).

In response to the honourable member's questions I provide the following details:

1. The Director of Public Prosecutions has informed me that Mr Fisher was sentenced by Judge Allan in the District Court on 27 October, 1992, for 14 counts of fraudulently taking lottery tickets. A sentence of two years and six months with a non-parole period of 15 months was imposed. That sentence was suspended upon Fisher entering into a bond to be of good behaviour for three years.

A condition of the bond was that he be under the supervision of a probation officer and to undertake psychiatric and other treatment as directed. The Director of Public Prosecutions examined the sentencing remarks of Judge Allan, and a number of other documents, including references and psychiatric material presented to the court by counsel for Mr Fisher.

The Director formed the view that the head sentence and non-parole period imposed were proper, but that Mr Fisher may well have been fortunate that the sentence was suspended. However, it was determined that an appeal was not warranted because there was material before the sentencing judge which

gave rise to a discretion to suspend. Even if the appellate court was of the view that most judges would not have exercised that discretion, it would be loath to interfere.

The Director did not consider that any of the further legitimate purposes of a Crown appeal would be served by such a course.

2. The Minister of Labour Relations and Occupational Health and Safety has provided the following response:

The Roosters Club was first advised of a stress related medical condition when the worker's solicitor forwarded a copy of a Prescribed Medical Certificate in a letter to them dated 22 October 1991. A Notice of Disability Form dated 28 October 1991 was then forwarded to the Club with no response.

WorkCover's investigations confirmed that the Roosters Club was advised
by the worker of the claim but the club failed to prepare an Employer Report Form. The Club was advised of the necessity to do so, but did not send any documentation to the Corporation and still has not done so.

The Field Inquiry Officer appointed by the Corporation contacted the Roosters Club's legal representative in January of this year in relation to the matter and management of the Roosters Club were interviewed and statements taken. It is Corporation policy to offer injured workers interim payments pending determination of their claim. The worker signed the consent form pursuant to Section 106 of the Act. Should it be established that the worker was not entitled to all or some of the interim payments the Corporation is entitled to recover the amount as a debt.

A determination to reject the claim was made on 23 July, 1992 at which time all parties were advised by letter. The matter is now subject to a Review Hearing on 18 December, 1992. The question of whether the Roosters Club incurs a penalty on their levy is dependent upon the outcome of the Review Hearing on 18 December, 1992. If the Corporation's determination is confirmed by the Review Officer the employer will not be penalised.

PUBLIC SECTOR SALARIES

In reply to **Hon. R.I. LUCAS** (15 October).

The Minister of Labour Relations and Occupational Health and Safety has provided the following response to the Honourable Member's question without notice and has also provided a response to the issues relating to salaries for the coordinating CEO's raised during the Appropriation Bill on 5 November 1992.

In respect of Dr. McPhail, the Governor in Executive Council approved the following salary and allowances:

1. A salary of $106 048 for Dr McPhail as Director-General, Education Department

2. An allowance of $15 000 per annum for Dr. McPhail as Coordinator of the Education, Employment and Training Portfolio.

3. An attraction allowance of $3,952 per annum for Dr. McPhail.

The following details are provided in relation to the portfolio coordinators as requested by the honourable member:

Dr. P. Crawford, Director, Department of Premier and Cabinet; Portfolio of Premier and Economic Development; no allowance is proposed for this role beyond existing salary package; Dr. Crawford's total salary package is the same in dollars that he received in his former position as CEO; Industry Trade and Technology. It consists of a base salary $111 485 per annum, loading to compensate for short-term contract of three years, $19 006 per annum; allowance in lieu of foregone Directors fees at SAGASCO, $25 000.

M. Lennon, CEO/Office of Planning and Urban Development; Portfolio of Housing, Urban Development and Local Government Relations; salary $94 087 per annum.

R. Payze, CEO Department of Road Transport; Portfolio of Transport Development. Salary $100 611 per annum.

T. Phipps, CEO Engineering and Water Supply Department; Portfolio of Public Infrastructure. Salary, $106 048 per annum.

W. Cossey, CEO Office of Business and Regional Development; Portfolio of Business and Regional Development, Tourism and State Services. Salary, $94 087 per annum.

R. Dundon, CEO Primary Industries; Portfolio of Primary Industries. Salary $94 087 per annum

BAIL

In reply to **Hon. K.T. GRIFFIN** (6 November).

The circumstances of the bail arrangements in the matter of Gerald Douglas Morrison are as follows: Morrison appeared before the Adelaide Magistrates Court on 9 September, 1992 and was allowed bail in his own undertaking of $10 000 with two guarantors of $10 000 each, one of which was to be lodged with the court in cash. Additional conditions as the residence, curfew and supervision were also attached to the bail.

Morrison's brother, signed as one guarantor and lodged $10 000 cash. A female person believed to be the offender's girlfriend signed as the second guarantor. Gerald Morrison signed his bail and was released from custody on 10 September, 1992. The bail was conditional for his appearance on 24 September, 1992 but on that day the court received advice that Morrison was in hospital and the matter was further remanded until 22 October, 1992. One of the guarantors, made application and the court refunded the monies to the guarantor on the same day.

Submissions were made to the court that the monies were required to meet a mortgage commitment and that when the original order for a cash deposit was made it was always on the understanding that the monies would be available for only a short period, i.e. until the original remand date. Gerald Morrison appeared in court on 22 October and the matter was further remanded, with bail to continue, until 17 November, 1992.

On 27 October, 1992 the guarantor, applied to the court to be released from his obligation as guarantor. He gave evidence that the offender Gerald Morrison had had a falling out with both himself and his girlfriend and that he felt unable to guarantee that the offender would comply with the conditions of his bail.

The court granted his application and a warrant was issued for the arrest of the offender who was apprehended, put before the court on 3 November and was remanded in custody where he still remains. There are only a small number of matters in which the court certifies bail requiring cash deposits. The Adelaide Magistrates Court, which handles in excess of 75 per cent of the State's serious criminal matters in the first instance, has had 20 such orders this year. These involve amounts from $500 to $10 000 with all but a few matters being towards the lower end of that scale.

There have been few instances in which bail agreements involving cash have been breached, and the court has made subsequent orders for the forfeiture of the cash in those matters. Given the basis on which the Bail Act is founded, it is only in

extreme circumstances that a condition requiring cash to be deposited, is attached to a bail agreement. Conversely, it is usually only in extreme circumstances that such a condition is varied or revoked. Staff at the Adelaide Magistrates Court are unable to isolate an instance in recent times in which a cash bail condition has been varied or revoked and the defendant has then absconded.

There is no evidence that the bail system is being manipulated as suggested.

PROSECUTION POLICY

In reply to **Hon. K.T. GRIFFIN** (10 November).

The Director of Public Prosecutions has reviewed the Police prosecution file and agrees with the decision not to prosecute. I provide the following details to the honourable member's specific questions.

1. The decision not to prosecute was made in accordance with the DPP guidelines on the basis there was no reasonable prospect of conviction given the evidence of independent witnesses. It was not based on the identity of the defendant nor the anticipated costs of the prosecution;

and,

2. Cost and time factors can be relevant in deciding whether it is in the public interest to prosecute a matter. They will not be decisive where by reason of the gravity of the offence or for other reasons it is appropriate to prosecute in the public interest.

COURT CASE FLOW MANAGEMENT

In reply to **Hon. J.C. BURDETT** (29 October).

The following is a response to the honourable members questions:—

1. Computerisation of the civil list in the Supreme Court will take place during December, 1992.

2. It is intended to impose on the Supreme Court the tight controls introduced in the District Court Rules of Court. However, it should be pointed out that, due to the general magnitude and complexity of cases remaining within the civil jurisdiction of the Supreme Court, there will be a high level of interaction required between the Masters of the court and the solicitors of the parties involved to monitor interlocutory processes. Furthermore more options will be made available to foster alternative dispute resolution processes than are currently available in the District Court. Some of the controls are already operating at this time. New rules, procedures and an enhanced computer system are expected to be in place by April, 1993 and this will further facilitate the disposal of court actions.

3. Computerisation of the civil list in the Magistrates Court will be achieved by the end of this year, however, it is not intended to include in the Magistrates Courts Division the tight controls of the pretrial processes as implemented in the District Court.

TERRACE HOTEL

In reply to **Hon. L.H. DAVIS** (10 September).

The Treasurer has provided the following response to the honourable member's questions.

1. The Government does not condone nepotism.

2. A detailed response follows.

3. The matter has been thoroughly investigated by the new Chief General Manager of SGIC who considers that it would be inappropriate to pay compensation to Mr and Mrs Fisher.

The honourable member has suggested that Mr Kean's son-in-law was employed as a chauffeur at the Terrace Hotel as a result of which the existing chauffeur worked fewer hours. The fact is that Mr Kean's son-in-law worked on a casual basis for a very short period driving the company vehicle only three times. As the normal driver was a permanent employee working 40 hours per week, he lost no hours.

The honourable member has suggested that Mr Kean's son was paid many thousands of dollars for fitting out bathrooms when the hotel was being refurbished. It was discovered during Grand Prix week 1989, immediately after the opening of the hotel, that 29 rooms had defective plumbing. As this was a design problem, it was up to the hotel to arrange repairs. As the work had to be done quickly, the General Manager of the hotel, Mr Robert Arnold, went to someone he knew. He asked Mr Christopher Kean, who he knew to possess a builder's licence, to have a look at the problem and recommend a suitable plumber.

The plumber was called in to fix the problem and did the repairs under the supervision of The Terrace's Maintenance Manager. Christopher Kean assisted with the plumbing work. The total payment made to Christopher Kean, the plumber, and for materials, was approximately $940 per room (total approximately $24 000).

The honourable member has suggested that Mr and Mrs Fisher who operated a shop at the Gateway were badly treated by Bouvet Pty Ltd in that they were not permitted to resume their business in the Terrace after the hotel had been refurbished. As The honourable member has acknowledged Mr and Mrs Fisher were operating on a monthly tenancy when SGIC took over the hotel and therefore they could have had no firm expectation of any continuing arrangement after the hotel had been refurbished.

It is difficult to understand why Mr Jensen who managed the hotel when it was the Gateway thought he had the authority to give undertakings on behalf of the new owner. In fact Bouvet decided to manage all the shops in the hotel rather than let them out. Mr Kean's daughter was one of the employees given responsibility for management of a shop, in her case the shop previously operated by Mr and Mrs Fisher.

The actions of Bouvet and SGIC have been twice examined by the Ombudsman who has found no evidence of any relevant act of maladministration or administrative impropriety.

SMALL BUSINESS

In reply to **Hon. L.H. DAVIS** (21 October).

1. Comparing State Government expenditure on small business with budgets for small business services in each State is not an accurate comparison of what Governments actually spend. The South Australian Government has a range of programs and activities on which it spends money and which far exceed the budget of the Small Business Corporation.

The honourable member cites Queensland experience in running introductory sessions. These sessions are already running in South Australia. The Small Business Corporation has organised and conducted three hour seminars for people starting

to plan a business since 1985-86. These courses are promoted, and an average of two or three each month are run. In addition the Adelaide College of DETAFE and the WEA run courses for business intenders and starters. The Corporation also runs 'outplacement courses', organised by other entities, for people retiring or being retrenched who are considering starting their own business.

The South Australian Government prefers to strengthen the private sector and not equate success with the amount of money spent as inferred in the question. South Australia is further advanced in the development of potential private sector advisers than most other States. Our philosophy is that the Corporation should not seek ever increasing sums of money for business enterprise advisory programs, but to develop the private sector—and the owner-operator capture points in particular—to provide these services in concert with Corporation staff. In so doing we can multiply our effectiveness at least 30 fold with no additional cost or burden on State finances. This philosophy is not as clearly defined or advanced in other State operations which have much larger budgets and staff resources.

2. The goals and objectives for all Ministerial Miscellaneous lines are generally not included in Program Estimates and Information Paper No 1. Only expenditure for major Government agencies appears. However, the Budget Estimates Committee had the opportunity to question the goals and programs of the Corporation and have them recorded in Hansard. This was not done so as the Hansard record clearly shows. Issues concerning the role, objectives, strategies, funding and programs of the Corporation were not raised by the Committee in any depth.

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

Leave granted.

YORKE PENINSULA FERRY

In reply to **The Hon. I. GILFILLAN** (20 October).

1. The Department of Road Transport has not undertaken a detailed study of the Gulf Link Ferry proposal nor at any stage commented publicly about the viability of the project. The Department's involvement has been to supply, at the request of the developer;

(a) information regarding traffic composition and volumes on existing routes,

(b) an indication of the acceptability of certain routes for use by road trains, and

(c) comments on the likely impacts on existing routes if, as put forward by the developer, changes in the patterns of heavy vehicle movements occur as a result of the opening of the ferry service.

The Department was not involved in investigating the attractiveness of the ferry to road users as an alternative to existing routes, nor the subsequent calculations of the volume of traffic the developer anticipates will utilise service.

In a preliminary assessment made by the Department for the Environmental Impact Statement, it was concluded that the arterial road infrastructure serving the ferry on both the Yorke and Eyre Peninsulas is adequate to cope with the increases in traffic anticipated by the developer to result from the ferry operations. This conclusion took into account the fact that the Port Wakefield to Kulpara section of the Wallaroo Road is not in ideal condition. The section had already been identified by the Department as one of a number of road sections throughout the State requiring upgrading due to the poor riding surface. However, the accident record compared to many other arterial roads in similar terrain is good and although the undulating surface is uncomfortable to drive it is not considered hazardous. Work on the section within the immediate future could only be undertaken at the expense of higher priority works elsewhere in the State.

Consequently, the Department currently has no plans to undertake roadworks associated with the establishment of a Spencer Gulf ferry service, should such a proposal become a reality. In any case, it is the opinion of the Department that the increases in traffic volumes or change in the safe operation of these roads, cannot be accurately determined until the ferry service is operational.

If the service is established the situation will be monitored and priority for upgrading of the road from Port Wakefield to Kulpara, or for additional works on other roads serving the ferry, reassessed as necessary.

2. Should the ferry service commence, the situation with regard to heavy vehicle movements through Wallaroo and Kadina will be monitored and appropriate action taken if necessary. At present, there are no plans for re-routing existing heavy vehicle movements around these towns. Arterial traffic movements within towns are seen as undesirable by many people and calls for bypasses are not uncommon. For example, bypasses have been sought for Burra, Millicent, Meadows, Port Broughton and Penola. It should be noted, however, that there is a strong contrary view and others see the arterial movements as the lifeblood of these same towns and are opposed to any form of bypass. At any rate, the high cost of constructing bypasses and the priority necessarily given to maintaining the existing road network, is likely to preclude even the most affected towns being bypassed within the foreseeable future.

3. Funding for any roadworks on the Yorke Peninsula, whether associated with the ferry service or not, would come from State sources or Federal Government grants for National Arterials, a funding category which, incidentally, is to be replaced by untied grants to the States in 1994. As detailed planning has not been undertaken, it is not possible to accurately give an estimated cost for either upgrading the Port Wakefield to Kulpara section of the road or town bypasses for Wallaroo and Kidney. The region, however, has not been ignored by the Government and funding of approximately $4 million has been allocated for the 1992-93 and 1993-94 financial years for reconstruction of the section between Kadina and Wallaroo.

GOVERNMENT LOAN GUARANTEE SCHEME

In reply to **Hon. R.I. LUCAS** (5 November)

The honourable Minister of Business and Regional Development has provided the following response:

Each year a number of inquiries are made, as distinct from formal applications but they generally do not meet the criteria for applicants under the scheme; and/or are referred to more appropriate sources of financing; or if they are managing their working capital inefficiently, measures are adopted to reduce working capital and thus their funding requirements. The scheme was reviewed by the Board during March 1990 at which time the screening criteria were analysed The original criteria were not amended, but it was resolved to spell them out more precisely in the light of past experience with the skill schemes operating in

other States were examined golliwog 1990 and were found to have similar criteria There are no plans to revise the Loan Guarantee Scheme at this juncture.

TONSLEY INTERCHANGE

In reply to **Hon. DIANA LAIDLAW** (28 October).

1. The Tonsley Interchange submission referred to by the former Minister of Transport has now been taken to Cabinet. An announcement about the future of the project was made on 16 November 1992.

2. The present site for the proposed Tonsley Interchange was decided upon following an examination of the following alternative sites by the State Transport Authority.

(a) Two sites located with the Southern Science Park adjacent to Sturt Road.

(b) One site located within the Southern Science Park adjacent to South Road at Darlington.

(c) The present site located at the existing Tonsley railway station.

Apart from the detrimental impact that sites located within the Southern Science Park would have on tenants of the Park, each would require the Tonsley rail line to be extended across Start Road via a rail overpass and underpass. Since the construction of a rail overpass or underpass would add approximately $6m to $8m to the cost of the Interchange the alternative sites located within the Southern Science Park were discarded in favour of the present site.

As regards the proposal to build a bus/rail interchange within the Westfield Marion Shopping Centre precinct, I am advised that such a scheme was examined many years ago by what is now the Office of Transport Policy and Planning. It was discarded as being too costly and disruptive to the local community because:

(a) It would require the construction of a new dual track spur rail line from the Noarlunga Centre rail line to the Marion Shopping Centre which would not only be costly in its own right but would require the acquisition of residential properties along the route thereby adding to the cost and causing hardship to the local community affected by the acquisition.

(b) It would require the construction of a rail overpass or Underpass across Diagonal Road to gain access to the Marion Shopping Centre precinct which I am advised would add approximately $6 million to $8 million lo the cost of the scheme.

It was also considered that building a bus/rail Interchange at the Marion Shopping Centre would be unattractive to bus passengers forced to travel to it from the southern and south eastern suburbs Additional time would be required to travel along Sturt Road to the Marion Shopping Centre compared to that required to travel to the Tonsley Interchange.

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

Leave granted.

YEAR 12 EXAMINATIONS

In reply to **Hon. R.I. LUCAS** (19 November).

The Minister of Education, Employment and Training has provided the following response:

1. The issue has been investigated very comprehensively and appropriate steps have been taken to ensure that students are not disadvantaged.

2. SSABSA has very comprehensive procedures associated with the setting, evaluating and editing of its examination papers, all conducted within a secure environment. The Chief Examiner chooses a panel of setters and 'evaluators' who respectively determine questions and consider the appropriateness of the questions to the syllabus and to students. The setters and evaluators are approved by the Director. The paper is edited for typographical correctness up to five times.

The error arose because no-one noted the significance of the kind of equation set in relation to three of the six parts of Question 12. To put this in perspective SSABSA produces over 50 written examinations and similar numbers of aural, oral, performance and other public assessments. It is estimated that up to 500 pages of written examination textual material is checked each year. It is almost totally error free and the Board has an enviable record in this regard.

It should be noted also that when such an error is acknowledged, comprehensive procedures are put in place to ensure students are not disadvantaged.

3. SSABSA has advised that this claim is not correct. The first call was received at 9.40 am. The SSABSA reception line was not opened until 8.45 am and all staff have given an assurance to the Director that no calls were received on this matter before the call noted above which was received by the Curriculum Officer for Mathematics in the presence of the Mathematics 1 Chief Examiner at 9.40 am.

4. Students whose performance in other questions was affected by Question 12 will not be disadvantaged as markers have been asked to refer to the teachers predicted Examination mark and note any anomalies between the performance of the student in the second half of the paper as against their earlier work, and the predicted examination mark. Such anomalies will be identified and appropriate allowances made by markers.

5. It is not a matter of remarking the whole paper but of 'double marking'. Question 12 first with all 6 parts included, and secondly with three parts excluded from the 6 part question and from the total possible score—to allow 2 per cent results for the paper as a whole. This procedure does not require two markers and a full exchange of papers and as a result, while the cost of this procedure is difficult to assess in advance, it is not expected to be significant.

FUEL PUMPS

In reply to **Hon. K.T. GRIFFIN** (27 August).

In response to the undertaking given by my predecessor on 27 August 1992 to provide the honourable member with a full briefing on the matters decided so far concerning the temperature correction of petrol, I wish to provide the following information: there has been considerable discussion and consultation since that time. The decision by the Standing Committee of Consumer Affairs Ministers (SCOCAM) at its meeting in Adelaide in July 1992 endorsed the implementation of a phased-in basis of mass or temperature converted volume as the basis for sale of petrol and diesel at the wholesale and retail level (LPG is already under the temperature conversion system). Ministers considered that a 5 to 10 year period was a feasible time for an implementation framework which would not place an undue burden on industry nor cause a flow-on to consumers. Ministers directed that there

be further consultation by the Standing Committee on Trade Measurement (SCTM) with industry and consumers about mechanisms for implementation.

Ministers made their decisions having received papers and submissions from the Australian Institute of Petroleum (AIP), the National Standards Commission (NSC) and other representatives of industry. Since that time further submissions have been received and, at a recent meeting of the National Trade Measurement Consultation Committee it was agreed that small working grownups be established to investigate the statistical validity of the S.C.T.M. survey, consider the disparity in costings, review any other issues such as whether there were alternatives in the wholesale sector.

I and my SCOCAM colleagues will await the advice of these working groups before considering further steps for implementation.

TRAVEL COMPENSATION FUND

In reply to **Hon. K.T. GRIFFIN** (18 November).

1. On 24 September 1992, the Chief Executive Officer of the Travel Compensation Fund wrote to Mr R D Duffy, Director of Holidaymaker Travel Services Pty Ltd advising that the company 'was no longer eligible to be a contributor to the Fund'. On the same day the South Australian Commercial Registrar wrote to the company advising that as membership of the Fund is a pre-requisite to holding a licence as a travel agent the company was requested to return the Travel Agents certificate issued by the Commercial Registrar.

2. The Commissioner for Consumer Affairs first became aware of a possible breach of the Travel Agents Act on 21 October 1992.

3. The Commissioner for Consumer Affairs is aware of 11 cases where persons may need to be compensated.

BUS ZONES

In reply to **Hon. J.C. IRWIN** (14 October).

The Minister of Housing, Urban Development and Local Government Relations has provided the following response:

1. No.

2. In respect of the second part of the Question, Section 195(1) of the Local Government Act, 1934, provides that a Council may impose fees and charges:

(a) for the use of any property or facility owned, controlled,
managed or maintained by the council,
(b) for services supplied to a person at his or her request. In addition, Parking Regulation 5(6) provides that a Council resolution establishing a parking zone may provide that a specified fee for parking must be paid. Thus I am advised that a council may, if it so wishes, charge a private bus company for the use of a bus zone which is located on a street or road under the control of the council.

Since, generally speaking, the Local Government Act does not bind the Crown, neither Section 195 nor Regulation 5(6) would apply to STA buses.

CAR RESTORATION

In reply to **Hon. J.C. IRWIN** (28 October).

The Minister of Education, Employment and Training has provided the following response:

1. The automotive sections at Croydon Park College of TAFE and Kingston College of TAFE have for very many years followed the accepted practice of including privately owned vehicles as an alternative for the practical component of their apprenticeship/vocational training programs. Similar systems are used for many other TAFE courses, an example of which is hairdressing where people are used as 'models' for practical training.

2. In the past, sections of the body trades area of the industry have been critical of colleges not teaching modern painting techniques to high standards. To address this criticism, and to provide a sound and relevant educational experience for students, some private and some government vehicles are used. It is the belief that this practice has the general approval of the industry.

It is felt to be necessary and appropriate to provide a range of 'real' work to challenge students and when a genuine restoration from a private person becomes available it may be accommodated where the project fits into the teaching program. The owners are generally involved in long waiting periods before commencement (two years in one of the cases in question) and for completion. All projects are selected on this basis.

The opportunity to work with such vehicles as cited above is appreciated by students.

3. The School of Automotive Engineering of Croydon Park College has painted a series of vehicles over the past few years using two pack painting systems. Two of these vehicles were of a classic type, namely an E-Type Jaguar and an Aston Martin. These vehicles had been restored by their owners and were delivered to the college ready for painting (bare metal).

Kingston College is not, and has not been, involved in the restoration of classic or racing cars. The Elfin Mono in the workshops at present has had components and systems dismounted and reassembled (without alteration) by pre-vocational students in order to expose them to various automotive practices. As part of their reports they will comment on what work they believe the owner should undertake to restore the vehicle. The pre-vocational students do not carry out any repairs or restoration: this would fall outside the scope of the course objectives.

The owner of the vehicle has contributed his skills and experience by assisting the students in this exercise and understands it is his responsibility to undertake any restoration work at his own expense.

4. The charges by the colleges in all such practical projects cover administrative and incidentals costs. For the Aston Martin and E-Type Jaguar the charge by the college was $130 each ($60 incidentals and $70 administration) which is simply based on the amount of time that the vehicle is being worked on rather than the age or type of vehicle.

There is a 'risk' borne by the owner with such a repair which is something that any person must take into account when using the services of a training institution compared with a commercial organisation with its associated guarantees. All materials used and processes undertaken (eg chrome plating) are at the expense of the owner.

5. There are no additional costs to the college in the repair of private vehicles. In fact one of the advantages of using private vehicles is that the owners pay for their own materials/parts.

6. The colleges cannot receive any benefits from the eventual sale of the private vehicle.

FAIR TRADING ACT

In reply to **Hon. J.C. BURDETT** (8 September).

Section 58 of the Fair Trading Act, 1987 commences with the provision that: a person shall not, in trade or commerce, in connection with the supply or possible supply of goods or services or in connection with the promotion by any means of the supply or use of goods or services . . .

The section then proceeds to outline a number of areas in which it is prohibited to make false or misleading representations. One such area is a false or misleading representation with respect to the price of goods or services. Section 58 mirrors a provision of the Trade Practices Act and has been incorporated in the Uniform Fair Trading Acts that have been enacted in all States and the Northern Territory.

The open-ended nature of the section that the honourable member draws attention to may, in fact, be deliberate in that Parliament sought to include many situations where consumers were misled—by false or misleading indications as to price. Although there has been no judicial interpretation in South Australia of Section 58 of the Fair Trading Act, in May 1989 Copperart Pty Ltd pleaded guilty in the Federal Court of Australia to offences under Section 53(e) of the Trade Practices Act (a similar provision to Section 58 of the Fair Trading Act) for advertising 'savings' based on artificially inflated retail prices or completely fictitious 'regular' prices. In handing down the penalty, Mr Justice Keely said:

...the advertisement of 'savings' on the 'recommended retail price' were designed to induce potential customers to believe that they would be 'getting a good deal' because the prices were less than the recommended retail price. The evidence shows that the companies spent large amounts of money in their endeavour to mislead potential customers into believing that they were being offered savings.

In interpreting Section 58(g) the Office of Fair Trading has had regard to the Copperart case and to the views of the Trade Practices Commission. The Commission's News for Business leaflet of November 1989 states:

If you make an express—or even an implied—comparison between a regular selling price and another price in an advertisement or on a price tag you must make sure that the 'regular price' is the price at which the advertised goods have been sold by you or your competitors over a reasonable period immediately preceding the advertisement.

It is noted that some traders say they do not understand the precise meaning of the words of Section 58. However, I would expect traders to know that when advertising goods or services they should endeavour to tell the truth. Whether or not traders are able to give precise meaning to the legislation where a trader doubles the price at which the goods are normally sold, claims a 50 per cent discount and then sells the goods at the normal price it is a blatant disregard to truth in advertising. The only purpose of this type of advertising is to encourage consumers into thinking they were getting a bargain which they clearly are not.

Concerned about the level of misleading advertising in Adelaide, the Office of Fair Trading instigated a campaign early in 1991 to inform traders who used the method of two price advertising to indicate price reduction, that the original price quoted must not be fictitious. The campaign took the form of visits by officers to the majority of Adelaide jewellers and a number of other stores practising two price advertising, press releases in both March and August 1991 and a mail out of over 400 leaflets in a joint Trade Practices Commission and Office of Fair Trading exercise to traders and the Retail Traders Association.

In addition since early 1990 both the Office of Fair Trading and the Trade Practices Commission have, on request, distributed a Trade Practices Commission leaflet which fully explains traders' responsibilities with regard to two price advertising. Since that time the Trade Practices Commission have published a booklet entitled "Advertising and Selling—A Business Guide to Consumer Protection under the Trade Practices Act". This booklet is available from the Trade Practices Commission and Office of Fair Trading officers have drawn traders attention to it when discussing advertising.

Following the ejection campaign, where it was noted by the Office of Fair Trading that many responsible traders were taking greater care with their advertising, the Office of Fair Trading received a number of complaints regarding false or misleading advertising. Approximately 50 per cent of these complaints came from other traders who unseeded they were being seriously disadvantaged by telling the truth when their less scrupulous competitors made false claims as to the discounts being offered. Complaints were investigated and are continuing to be investigated. Depending on the circumstances and the evidence available, the Office of Fair Trading has used a variety of sanctions to achieve a fair market place including the instituting of proceedings against two alleged offenders.

CRIME STATISTICS

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister representing the Minister of Correctional Services a question about the major offence statistics in the correctional services annual report.

Leave granted.

The Hon. J.F. STEFANI: Last week Minister Gregory tabled the 1991-92 annual report for the Department of Correctional Services. The report revealed an alarming increase in the rate of the following major offences: assault, up 22.04 per cent, to 310; theft, break and enter, up 21.11 per cent, to 585; driving related offences, up by 125.8 per cent, to 1 321; drink driving, up by 96.54 per cent, to 796; and drugs, up by 359.45 per cent to 340. In view of these huge increases—

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

The Hon. J.F. STEFANI: The 12 month period 1991-92. These are the figures given in the annual report. My questions are:

1. Will the Minister give details of the break-up and the number and nature of the driving related offences which attracted a prison sentence?

2. Will the Minister also provide a break-up of the nature and number of the drug related offences which similarly attracted a prison sentence?

The Hon. C.J. SUMNER: I note some of those statistics, and I am not sure that the honourable member is correct in all that he has outlined. Of course he did not mention—I suppose because he was not asking a question about it—that there are a number of areas, including car

theft, where offences last financial year were down on previous years, and a couple of other categories as well. Nevertheless, the honourable member has asked me some specific questions which I will have to take on notice and I will bring back a reply.

TREE PLANTING

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister representing the Minister of Environment and Land Management a question about trees.

Leave granted.

The Hon. PETER DUNN: A couple of years ago the then Prime Minister Bob Hawke arrived with great flair in the Riverland, somewhere about Renmark, and announced that a billion trees would be planted before 1993. This was warmly embraced by Trees For Life and greening of Australia. As a result of that the Rural Soil Conservation Groups were formed and these groups have been very successful. The South Australian Farmers Federation has been enthusiastic about the regreening of Australia. However, if one divides one billion trees by the number of people in Australia one comes up with a figure of about 58.8 trees per person. The Prime Minister at the time said that we must all pull our weight and help green Australia—in other words, all plant some trees. It is my understanding, though, that we have fallen behind in our endeavour to plant these trees. My questions are: how many trees have you planted, Minister, since 1989?

The Hon. Carolyn Pickles: How many have you planted?

The Hon. PETER DUNN: I have planted mine, plus. Further, how many trees has the Party planted and how is the greening of Australia going in South Australia? What is needed in South Australia to meet the Hawke commitment?

The Hon. ANNE LEVY: I am not sure whether those specific questions were addressed to me or to the Minister whom I represent. I assure the honourable member that I have recently planted quite a number of trees, having started a garden, but I am sure that he is not interested in that type of information. I think I recall having read not long ago that the tree planting program was proceeding so well that it was expected to reach its target number long before the target date of the year 2000. I may be mistaken about that, so I will certainly refer the question to the Minister of Environment and Land Management and bring back a detailed reply.

MUSIC EDUCATION

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister representing the Minister of Education a question on the subject of music education.

Leave granted.

The Hon. R.I. LUCAS: Recently in this Chamber I raised the issue of the Education Department's proposals to scrap the musical instrument program conducted by the DUCT telephone to students in isolated areas of the Upper South-East. The move will affect up to 200 students, some of whom had no opportunity to learn a musical instrument before the DUCT program was established about 18 months ago.

Since the Opposition raised this issue, I am advised that the department and the Minister's office have been inundated with correspondence and telephone calls from parents, students and teachers outraged at the Government's plans; so much so that the Government has drawn up a contingency plan that would result in the DUCT program being shifted from its current Naracoorte base to Mount Gambier.

Presently, three brass and woodwind teachers travel throughout the Lower South-East teaching students face to face, and, for three days a week, they would also take on 27 of the 45 weekly lessons currently provided by DUCT at Naracoorte for students in the Upper South-East. Teachers and parents tell me this attempted compromise is totally unsatisfactory because, apart from the fact that 45 lessons will not squash into 27, no new students would be taken on for at least 12 months. Today my office received a letter from the Millicent Combined Schools Orchestra addressed to the Premier, which says in part:

> It is with great concern I write to you regarding significant changes proposed by the Education Department of South Australia to the instrumental music teaching program in the South-East country districts. At present, children within a range of approximately 80 kilometres of Mount Gambier where the existing teachers live are taught by weekly lessons in a face to face situation within their own school. These very busy teachers arrive in a school, teach for one to one and a half hours with groups of children at different levels, then in their lunch breaks, etc., drive on to the next school.
>
> The Education Department proposes next year to axe this program, denying for at least one year and probably two any new students the right to learn instruments taught by three of these teachers . . . My son's school (Millicent North Primary School) has a waiting list of 53 students wishing to play . . . these instruments next year. The existing students of these teachers may have to continue only on the DUCT or open access system.

I am told that the Millicent Combined Schools Orchestra, established 21 years ago, has more than 120 students learning instrumental music and that it created the first orchestra of its type in the country. The orchestra is backed by local industries, yet the teachers now having their job specifications radically changed are the basis of the orchestra's success. The letter concludes:

> We believe that, if this proposal goes ahead, it will be the beginning of the end of all we have worked towards for the past 21 years. We will not let it happen.

My questions to the Minister are:

1. What will be the total cost of equipping Lower South-East schools, which presently receive face to face music tuition, with DUCT equipment and where is this funding in the current education budget?

2. Has the Education Department made provision in its budget for supervisors to look after music students undertaking DUCT courses next year or is it expected that parents will provide this service for free?

3. Does the Minister concede that her decision may jeopardise the future of the Millicent Combined Schools Orchestra and will she now review the decision?

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

MEMBERS OF PARLIAMENT (REGISTER OF INTERESTS) (RETURNS) AMENDMENT BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to amend the Members of Parliament (Register of Interests) Act 1983. Read a first time.

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

That this Bill be now read a second time.

The Members of Parliament (Register of Interests) Act has been in operation since 1983.

The Act has generally speaking operated well. However, as part of the Government's initiative in the fields of anti-corruption and anti-fraud in the public sector, a review of the Act has been conducted.

These amendments tighten up the situations in which Members are required to disclose connections with entities with which Members have connections of a financial nature. The Bill also picks up deficiencies identified in the Act by the Registrars and by the former Solicitor-General, Malcolm Gray Q.C.

I shall deal first with the minor deficiencies identified by the former Solicitor-General.

Minor amendments are made to the definition section. The definition of 'spouse' is amended to bring it into line with the definition of putative spouse in the Family Relationships Act, which was amended slightly in 1984.

The definition of 'financial benefit' has been amended to exclude remuneration received by a person as a Member or officer of Parliament or a Minister of the Crown or in respect of membership of a Parliamentary Committee. Remuneration received under the Parliamentary Salaries and Allowances Act 1965 is presently excluded. Money received by Ministers and Members as a consequence of holding Parliamentary Office or Ministerial Office are matters of public knowledge and record and there is no need for those sums to be recorded in the Register.

Section 4 (4) of the Act provides that a Member is not required to include in an ordinary return any information which has been disclosed in a previous return. The provision has been responsible for creating uncertainty as to what information should be included in ordinary returns. It is not clear whether a nil return can be lodged by Members thereby indicating that all previously advised information still stands, or whether all information already registered must be repeated in each ordinary return. The former Solicitor-General advised that the subsection does not serve a particularly useful purpose and can be repealed. The repeal of the sub-section will result in Members being required to furnish full information in each annual ordinary return.

The major amendments fall into two categories. The first category relates to the disclosure of the existence of the relationships between the Members and organisations with which the Member has a financial connection. The second category ensures that where a Member gains a financial benefit as a result of organising his or her affairs so that income is derived via a proprietary limited company, or via a trust, the Member is obliged to make the same kinds of disclosures about the company's or trust's income sources as an individual Member is obliged to make.

The purpose of the Act is to provide a safe-guard whereby Members can be seen to be making full and frank disclosure of those persons and bodies with whom they have dealings, where those dealings might be seen to have a bearing on matters before Parliament. Members are currently required to lodge annual returns which disclose the names of those from whom the Member has received certain financial benefits during the previous year.

However, the current definitions of 'income source' and 'financial benefit' are so narrow that a strict interpretation of the Act would see Members required to disclose only sources from which they receive financial benefits, where those financial benefits were derived from employment or paid offices or a business or vocation engaged in by the Member. These definitions are too narrow to achieve the disclosure of relationships where potential conflicts may arise or where a Member's impartiality may be questioned. The Government's view is that Members should be required to disclose the names of all sources from which financial benefits are received, irrespective of whether that financial benefit was derived as a result of employment or business engaged in by the Member.

In practice, Members have complied with the spirit of the existing legislation by disclosing the sources of all income actually received during the previous year rather than limiting disclosure to that required by the letter of the legislation, namely income derived from employment or business activities.

The amendments give legislative force to ensure that this practice continues, by extending the types of relationships which must be disclosed. Disclosure of the names of bodies in which Members are investors, and of bodies to which Members have lent money is now required. This will ensure that relevant connections of a monetary nature between Members and banks, building societies and other bodies and individuals are disclosed.

The other aim of the major amendments is to ensure that any interests held by 'a person related to a Member' are disclosed.

Where a Member organises his or her affairs through either a family trust or a family proprietary company, nothing in the Act requires the Member to disclose the interests of the trust or the company. The very nature of such trusts or companies requires disclosure of their interests if the purposes of the Act are to be achieved. Accordingly the amendments include a new definition of 'a person related to a Member'.

A person related to the Member covers:

1. Members of the Member's family;
2. Proprietary limited companies in which the Member or a member of the Member's family is a shareholder; and
3. Trustees of a trust of which the Member or a member of the Member's family is the beneficiary.

Trustees of testamentary trusts, that is executors of wills, are excluded from the definition of persons related to a Member. Thus, Members will not be required to disclose the names of the trustees of wills under which they are beneficiaries.

However, beneficiary is defined broadly and includes a person who is a trustee or an object of a discretionary trust.

The Bill also requires more explicit disclosures where a Member is involved with a trust. This will bring the level of disclosures required from these Members into line with the disclosures required of Members who are members of companies. The identity of a Member's fellow directors or shareholders is already the subject of public record at the Australian Securities Commission. Members who are trustees or beneficiaries of trusts will be required to disclose the names and addresses of cotrustees or trustees of those trusts respectively. These changes will ensure that the purposes of the Act are not thwarted.

In addition, the amendments clarify the situation where members are obliged to disclose gifts. 'Gift' was not previously defined, though members were required to disclose the names of people who made them gifts of over $500, where those people were non-family members. The amendments provide a definition of 'gift' which sets out that a gift is a transfer of property which is made for less than adequate consideration and not in the course of an ordinary commercial transaction.

The amendments create a parallel requirement to disclose the name of a source of benefits other than gifts. Previously, members were obliged to disclose the names of persons who allowed members to use their real property. The distinction between use of real property and other assets is no longer seen to be justified. Where a member derives a benefit which is worth more than $500, whether from the use of someone else's house or from the use, for instance, of someone else's car, the fact that the member has a close connection with the benefactor is to be disclosed.

It should be remembered that members are not required to quantify the values of income received, investments or assets held, or of other benefits received. The object of the Act is to disclose the fact that the member has the relationship with the person or organisation in question.

The amendments will ensure that public confidence in members in sustained. I commend the Bill to the members. I seek leave to have the explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1: Short title.

Clause 2: Commencement

Clause 3: Amendment of s. 2—Interpretation

A definition of '**beneficial interest**' is inserted to extend the concept to include a right to re-acquire property. The concept is to be used in section 4 (3) *(a)* (as proposed to be amended by clause 4) and 4 (3) *(d)* to ensure that a member discloses any beneficial interest that the member or a person related to the member holds in securities or life insurance policies issued by a company, partnership, association or other body or in land.

A new definition of '**gift**' is inserted to ensure that the term (which is used in section 4 (2) *(d)* of the principal Act) is not limited to transfers that are entirely gratuitous but will include transfers that are made for less than adequate consideration and not in the course of an ordinary commercial transaction. Testamentary dispositions are excluded from the term.

The definition of '**financial benefit**' is amended to ensure that a member need not disclose in a return under the Act the income source of any financial benefit received by a person as a member or officer of Parliament or a Minister of the Crown or in respect of membership of a committee to which the person was appointed by Parliament or either House of Parliament. Currently this exclusion is limited to a financial benefit received under the Parliamentary Salaries and Allowances Act 1965 which has been repealed.

A new definition of '**a person related to a member**' is inserted to ensure that interests held by the persons included within the definition are disclosed under the Act. A person related to a member is defined as a member of the member's family (as currently defined in the Act), a proprietary company in which the member or a member of his or her family is a shareholder, and a trustee of a trust (other than a testamentary trust) of which the Member or a member of his or her family is a beneficiary. The latter includes, by virtue of new subsection (2), a trustee of a discretionary trust of which the member or a member of his or her family is a trustee or object.

The definition of '**spouse**' is amended so that the inclusion of putative spouse is up to date with the meaning of that relationship under the Family Relationship Act 1975.

A new subsection (2) is inserted to provide that for the purposes of the Act a person who is a trustee or object of a discretionary trust is to be taken to be a beneficiary of the trust.

A proposed new subsection (3) provides that a person is an investor in a body if the person—

(a) has deposited money with, or lent money to, the body that has not been repaid;

or

(b) holds, or has a beneficial interest in, securities (as defined by section 92 of the Corporations Law) of the body or a policy of life insurance issued by the body.

'**Securities**' is widely defined by section 92 of the Corporations Law as—

(a) debentures, stocks or bonds issued or proposed to be issued by a government;

(b) shares in, or debentures of, a body corporate or an unincorporated body;

(c) prescribed interests;

(d) units of such shares or of prescribed interests;

or

(e) an option contract,

but as not including a futures contract or an excluded security.

'**Prescribed interests**' again is a very wide concept under the Corporations Law encompassing profit making schemes that are not funded by way of the issuing of shares or debentures.

These definitional provisions are to be used in section 4 (3) *(a)* (as proposed to be amended by clause 4) which will require disclosure in a member's primary and annual return of the name or description of any company, partnership, association or other body in which the member or a person related to the member is an investor.

Clause 4: Amendment of s. 4—Contents of returns

'A person related to the member' is substituted for 'a member of his family' in subsection (1) *(a),* 2 *(a)* and *(d)* and (3). This will require disclosure in relation to the following matters in relation to persons within the definition of '**a person related to the member**': any income source, any income source of a financial benefit, any gift over $500, any investment in a company, partnership, association or other body, trust, bond or fund, any debt or loan over $5 000, and any other substantial interest which might appear to raise a material conflict between the member's private interest and the member's public duty.

Consequential amendments are also made to subsections (2) *(d)* and (3) *(c)* and *(f)*.

Paragraph *(e)* of subsection (2) is substituted. The paragraph currently requires a member to disclose the name and address of any person (other than a person related by blood or marriage) who conferred a right to use real property on the member for the whole or a substantial part of the return period. The amendment extends the requirement to disclose in two ways. As above disclosure is required if the right of use is held by 'a person related to the member'. In addition, disclosure is required not only in respect of a right to use land but also in respect of a right to the use of any other property of or above the value of $500 that is conferred otherwise than for adequate consideration or by virtue of an ordinary commercial transaction.

Paragraph *(a)* of subsection (3) is substituted. The paragraph currently requires a member to disclose the name or description of any company, partnership, association or other body in which the member or a member of his or her family holds a beneficial interest. Under the amendment, disclosure will be required of the name or description of any such body in which the member or a person related to the member is an investor (see clause 3 above).

Paragraph *(c)* of subsection (3) requiring disclosure of a concise description of any trust in which the member or a person related to the member is a beneficiary is amended to require similar disclosure in respect of trusts of which the member or a person related to the member is a trustee and also to expressly require disclosure of the names and addresses of the trustees in the case of trusts of either kind.

A new paragraph *(fa)* is inserted in subsection (3). The new paragraph will require disclosure of the name and address of any natural person who owes the member or a person related to the member money in an amount of or exceeding $5 000. Loans to a person related to the member or a member of his or her family by blood or marriage are excluded from this requirement.

Subsection (4) is substituted. The deletion of the current subsection (4) means that members will be required to furnish full information in each return.

The new subsection (4) makes it clear that in the case of a trustee it is only interests held in that capacity which must be disclosed.

Subsection (7) is amended so that in disclosing information no distinction need be made between the interests of the member personally and those of any person who is 'a person related to the member'.

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

WHISTLEBLOWERS PROTECTION BILL

The Hon. C.J. SUMNER (Attorney-General) obtained leave and introduced a Bill for an Act to protect persons disclosing illegal, dangerous or improper conduct; and for other purposes. Read a first time.

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

That this Bill be now read a second time.

The public disclosure of information which is confidential—or thought to be confidential—but which exposes criminal activity, malfeasance, public danger and the like, is commonly called 'whistleblowing'. Campaigns against corruption and malfeasance in high places, in Australia and overseas, have traditionally placed emphasis on the need to provide protection for those 'insiders' who disclose information in the public interest, and who may be prosecuted, sued or victimised for having done so. There are a number of notorious examples of this phenomenon both in Australia and elsewhere.

In his final report, Commissioner Fitzgerald stated in relation to his investigations into public malfeasance in Queensland:

> There is an urgent need . . . for legislation which prohibits any person from penalising any other person for making accurate public statements about misconduct, inefficiency, or other problems within public instrumentalities. What is required is an accessible, independent body to which disclosures can be made, confidentially (at least in the first instance) and in any event free from fear of reprisals. The body must be able to investigate any complaint. Its ability to investigate the disclosures made to it and to protect those who assist it will be vital to the long term flow of information upon which its success will depend.

This view has not been an isolated one. The Fitzgerald recommendation on this matter was taken up with great thoroughness by the Queensland Electoral and Administrative Review Commission, and had resulted, in April 1992, in endorsement of the principles and the detail by the Queensland Parliamentary Committee for Electoral and Administrative Review. In December 1991 the Review of Commonwealth Criminal Law (known as the Gibbs committee after its Chairman, Sir Harry Gibbs) published its final report, which also recommended a form of whistleblowers protection. The Government of New South Wales has tested the waters by making public a draft Bill of its own. Support has also come from the Australian Press Council, which stated in September 1991:

> First, whistleblowing should be protected because it represents one aspect of freedom of speech—and a basic right of the Australian people. Second, an independent system, not a supplement to the current common law, should be established in order to compensate for the lack of a clear guarantee of freedom of expression under the [State] and the Australian Constitution. Third, the protection of whistleblowers should not be limited to the public sector only. However, the protection should be wider in the public sector.

In late 1991 it was announced that the Government would introduce whistleblowers protection legislation as a part of its public sector anti-corruption policy. This undertaking was repeated in a ministerial statement to this Council on tabling the Final Report of the National Crime Authority on South Australian Reference No 2. This Bill is, therefore, an integral part of the Government's comprehensive anti-corruption program which has included:

- the establishment of a Police Complaints Authority;
- the development of codes of ethics and conduct for police officers and public sector employees;
- the enactment of the Statutes Amendment and Repeal (Public Offences) Act 1992;
- the launching of a public sector fraud policy and the establishment of the Public Sector Fraud Coordinating Committee;
- the establishment of the Anti-Corruption Branch of the South Australian Police Force.

While it is clear that the desirable form of such legislation has not been agreed on a national basis, the Government is of the opinion that action must be taken in order to provide protection for those who disclose public interest information in the public interest. Such legislation is not only about freedom of speech it is also a useful weapon against corruption for personal gain, incompetence and danger to the public interest. These

considerations make it clear that the scheme should apply beyond the public sector. Apart from that, it is also the case that the distinction between the public sector and the private sector is artificial and in practice blurred—and, in the present climate, is likely to become more so.

A first draft of the Bill has been made widely available for public consultation. I would like to say that I am very grateful to the considerable number of those consulted who took the time and the trouble to provide very valuable comments on the difficult issues that such legislation must address. Many of these comments have resulted in changes to the draft Bill so that it has reached the form that it takes today. Further, I would like to make it clear that the Government stands ready to hear further opinion on the Bill as it is introduced, and, for that purpose, I intend that it be not proceeded with until the New Year. I encourage any interested party to make comment, or further comment, on this Bill.

The Bill sets two kinds of balances. The first is the substantive policy balance. If the Bill makes it too hard for whistleblowers to get the protection which it offers, then it will be ignored and whistleblowers will risk reprisals as they do at the moment. This would be counterproductive and wasteful. If the Bill makes it too easy for whistleblowers, it will undermine the integrity of Government and the private sector, and risk justifiable governmental or commercial and industrial confidentiality.

The Government does not believe that legislation in this area should restrict a whistleblower to go through the appropriate authority. This is, fundamentally, an issue of freedom of speech. But there are also more practical reasons. It may be that the disclosure relates to that authority; or it may be that there is, in relation to the disclosure, no appropriate authority; or it may be that the situation is so urgent that an appropriate authority would not be appropriate. And an appropriate authority may well have to disclose the information in order to investigate it properly. So, the Bill encourages the use of an appropriate authority but makes it clear that the whistleblower may go elsewhere if it is reasonable and appropriate in the circumstances to do so.

The second kind of balance is the style balance. One of the objects of the Bill is to inform all who read it of their rights and duties, and to channel disclosures if at all possible to responsible investigating authorities. Therefore, the Bill should be as clear and as comprehensible as possible. Both the Queensland and New South Wales Bills are considerably more lengthy and detailed than the form which is advocated here. But they are also less understandable and informative to the reader.

The Government does not believe that this State needs more investigating authorities and more bureaucratic structures for dealing with these disclosures. The best course is to facilitate the work of the investigating authorities and the safeguards that currently exist here, some of which have been established as previous parts of the anti-corruption policy. That is why the Bill seeks to leave the investigation of disclosures and the administrative protection of whistleblowers to such bodies as the police Complaints Authority, the Auditor-General, the police and the Anti-Corruption Branch and the Equal Opportunity Commissioner.

The effect of the Bill will be to enact a regime of protection for those who disclose public interest information in the public interest, which is in addition to any other protection that the law may supply. The scope of any protection currently existing at common law is uncertain. The traditional rule dates from 1856 and requires 'iniquity'. What that means is uncertain and at best requires the court to weigh the public interest in disclosure against the public interest in confidentiality.

It also requires disclosure to the 'proper authorities'. The courts will also look to the motives of the informer. In all these respects, the Bill provides an enhanced regime for whistleblowers. It recognises that certain information is *prima facie* in the public interest to disclose. It does not require disclosure to the 'proper authorities', and it takes the view that a reasonable belief in truth is more important than the motive in disclosure.

The Bill does not require a whistleblower to go to an appropriate authority, but it encourages them to do so. It protects the confidentiality of their identity, but it requires them to cooperate with any official investigating authority. The protections involve immunity from criminal and civil action, and the right to seek redress for victimisation under the Equal Opportunity Act. I commend the Bill to the Council. I seek leave to have the explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title. This clause is formal.

Clause 2: Commencement. This clause is formal.

Clause 3: Object of Act. This clause provides that the object of this proposed Act is to facilitate the disclosure, in the public interest, of maladministration and waste in the public sector and of corrupt or illegal conduct generally.

Clause 4: Interpretation. This clause provides for definitions of terms used in the Bill, including the definition of 'public interest information'. The clause further provides that the question whether a public officer (which is defined) is or has been involved in an irregular and unauthorised use of public money, or whether a public officer is guilty of impropriety, negligence or incompetence in or in relation to the performance of official functions, is to be determined with due regard to relevant statutory provisions and administrative instructions and directions governing the employment of that officer.

Clause 5: Immunity for appropriate disclosures of public interest information. This clause provides that a person who makes an appropriate disclosure of public interest information incurs no civil or criminal liability by doing so. The circumstances in which a disclosure of public interest information is appropriate for the purposes of this proposed Act are—

- if the person believes on reasonable grounds that the information is true or, where the person is not in a position to form such a belief about the truth of the information but believes on reasonable grounds that the information may be true and is of sufficient significance to justify its disclosure so that its truth may be investigated; and
- the disclosure is made to a person to whom it is, in the circumstances of the case, reasonable and appropriate to make the disclosure.

Subclause (3) further provides that a disclosure is taken to have been made to a person to whom it is, in the circumstances of the case, reasonable and appropriate to make the disclosure if it is made to an appropriate authority. It is not intended to suggest, by this subclause, that an appropriate authority is the only person to whom a disclosure of public interest information may be reasonably and appropriately made.

An appropriate authority for the purposes of this clause is a Minister of the Crown or, depending on the nature of the information, any of the authorities listed in subclause (4).

Subclause (5) provides that if a disclosure of information relating to fraud or corruption is made, the person to whom the disclosure is made must pass on the information to the Anti-Corruption Branch of the police force.

Clause 6: Informant to assist with official investigation. This clause provides that a person who discloses public interest information must assist with any investigation of the matters to which the information relates by the police or any other official investigating authority and a person who fails, without reasonable excuse, to comply with the obligation imposed by subclause (1) forfeits the protection of this proposed Act.

Clause 7: Identity of informant to be kept confidential. This clause provides that a person to whom another makes an appropriate disclosure of public interest information must not, without the consent of that person, divulge the identity of that other person except so far as may be necessary to ensure that the matters to which the information relates are properly investigated. The obligation to maintain confidentiality imposed by this proposed section applies despite any other statutory provision to the contrary.

Clause 8: Victimisation. This clause provides that a person who causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has made or intends to make an appropriate disclosure of public interest information commits an act of victimisation. An act of victimisation under this proposed Act may be dealt with under the Equal Opportunity Act 1984 as if it were an act of victimisation under section 86 of that Act.

Clause 9: Offence to make false disclosure. This clause provides that a person who makes a disclosure of false public interest information knowing it to be false or being reckless about whether it is false is guilty of an offence the penalty for which is imprisonment for 2 years.

Clause 10: Non-derogation. This clause provides that this proposed Act is in addition to, and does not derogate from, any privilege, protection or immunity existing apart from this Act under which information may be disclosed without civil or criminal liability.

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

AMBULANCE SERVICES BILL

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

Schedule of the amendments made by the Legislative Council to which the House of Assembly has disagreed.

No. 2. Page 4, lines 13 to 15 (clause 12)—Leave out paragraph *(b)* and insert new paragraphs as follows:

(b) two members nominated by the Priory;

(ba) one member who is a serving volunteer ambulance officer elected by serving volunteer ambulance officers;

(bb) one member who is a person serving as a volunteer in the administration of the provision of ambulance services elected by persons who are serving as volunteers in the administration of the provision of ambulance services;.

No. 3. Page 4, line 22 (clause 13)—Leave out 'volunteer'.

No. 4. Page 4, lines 23 and 24 (clause 13)—Leave out these lines and insert 'serving volunteer ambulance officers and persons who are serving as volunteers in the administration of the provision of ambulance services to advise the association in relation to the provision of volunteer ambulance services in country regions'.

No. 5. Page 7, line 4, the Schedule—Leave out 'for 12 months after the repeal of that Act' and insert 'until surrendered by the holder of the licence'.

Schedule of the alternative amendments made by the House of Assembly in lieu of Amendments Nos 2 and 3, disagreed to by the House of Assembly.

No. 2. Clause 12, page 4, lines 13 to 15—Leave out paragraph *(b)* and insert new paragraphs as follows:

(b) two members nominated by the Priory;

(ba) one member who is a serving volunteer ambulance officer nominated by the Priory from a panel of three such officers selected by the advisory committee established under section 13;

(bb) one member who is a person serving as a volunteer in the administration of the provision of ambulance services nominated by the Priory from a panel of three such persons selected by the advisory committee established under section 13.

No. 3. Clause 13, page 4, lines 22 and 23—Leave out 'comprised of members who are volunteer ambulance officers'.

After line 24—Insert new subclause as follows:

(2) At least one-third of the members of the committee must be volunteer ambulance officers and at least one-third of the members of the committee must be persons serving as volunteers in the administration of the provision of ambulance services.

The Hon. BARBARA WIESE: I move:

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

I understand that the amendments that were carried in the House of Assembly represent a considerable series of compromises reached between the Minister of Health and members of the Opposition, and I understand that in the true spirit of compromise there has been some give and take on some of these matters in order to reach this package, which I commend to the Committee.

The Hon. DIANA LAIDLAW: I agree with the words expressed by the Minister in summing up the negotiations in the other place because a great deal of compromise has taken place. Five amendments to the Bill were passed in this place. The other place did accept the first amendment, which related to clause 6 in respect of licences. It was felt very strongly in this place that an ambulance service must also prove that it is an efficient service, and the Minister must make that assessment when determining whether or not to grant a licence. I am pleased that the Minister has agreed to that amendment.

The second amendment relates to clause 12, the governing body of the association. We had moved in this place to reduce from four to two the members nominated by the Priory. We had also indicated that one further member must be a person serving as a volunteer ambulance officer, elected by serving volunteer ambulance officers; and a further member to be a person serving as a volunteer in the administration and provision of ambulance services elected by persons who are serving as volunteers in the administration of ambulance services.

The House of Assembly has agreed that the Priory appoint only two members without qualification and that there should be one member who is a serving volunteer ambulance officer and one member who is a person serving as a volunteer in the administration in the

provision of ambulance services. However, the manner in which they are to be appointed to the governing body of the association has been varied since the Bill left this place, and it is now proposed that those two representatives of volunteers be nominated by the Priory from a panel of three such persons selected by, in each instance, the advisory committee which has been established under section 13 of the Act. I believe that that is a reasonable compromise.

I am particularly pleased that the principal point for which we were arguing, namely, that volunteers, whether serving as a volunteer ambulance officer or serving the administration in the provision of ambulance services, should have some representation on the board. Certainly, we have gone a long way in achieving that since the Bill was introduced in the other place some months ago. We certainly have recognition now for people who are serving as volunteers in the administration in the provision of ambulance services.

A number of changes are proposed to section 13, which addresses the matter of the advisory committee. I note that when the Bill was introduced in the other place there was no provision at all for an advisory committee, and there has been a great deal of negotiation over the past two or three months on, first, the establishment of that committee and then the composition thereof.

After consideration the Liberal Party, the Democrats and the Government all agreed that it was important that there be an advisory committee to advise the association in relation to the provision of ambulance services in country areas. There was discussion whether that committee should advise in relation to all ambulance services in country areas or just to volunteer ambulance services. Ultimately it has been agreed in the other place—and I am prepared to agree in this place—that this advisory committee should no longer be confined just to volunteer ambulance services in country regions but that it should also include seven or eight country towns that do have a paid service and their own licence to operate those services.

Initially in this place the Democrats and the Opposition had on file amendments proposing that the composition of this advisory committee be half volunteers who are serving ambulance officers and half who are serving as administrators in the provision of ambulance services. At the same time, the Government had on file an amendment which provided that only half of the advisory committee comprise volunteers.

Since the Bill has been to the other place it has now been determined that the volunteers should comprise two-thirds of the membership of this advisory committee, with one-third nominated by the association. I am prepared to accept that compromise.

In an ideal world, if this advisory committee was confined to volunteer ambulance services, it would be right and proper that the membership of that committee be confined to only volunteers. However. that is not now to be so, because, as I indicated, it is also to comprise these seven or eight licences in regional country centres. There is also much expertise in the country communities, and that expertise may not be strictly associated with persons serving in a volunteer capacity in the ambulance service. For instance, mayors of some councils may have a very keen interest and much to give to this advisory committee and, as the provision was earlier worded, we would have precluded any opportunity for them to serve on this advisory committee. I do not see why we should necessarily disallow such input now that this committee is to advise in relation to all ambulance services across country regions in South Australia.

As I said, the volunteers will still have majority control because they will have two-thirds of the membership of this committee. The last amendment made in the other place was to disagree with our amendment in the schedule relating to transitional provisions and the repeal of a licence after 12 months. In this place we were determined to see that there was not any possibility of the association and the Minister getting rid of these licences in the country areas after the 12 month transition period after repeal of this Act. In the other place the Minister has given unqualified guarantees that that is not his intention, and the Liberal Party is prepared to accept those undertakings from the Minister.

This has been an interesting exercise with respect to the debate and negotiation on this Bill. It is a credit to all who have been involved—the volunteers, the members of the Priory and others—that we have reached acceptable compromises on a matter that is very important to the health and wellbeing of South Australians in all areas, but particularly in country areas in terms of volunteer ambulance services. It is interesting to note that we have reached such compromises, considering all the emotion that has surrounded this issue of ambulance services over many years.

The Liberal Party is satisfied that strong and adequate recognition has been now provided in this Bill for the important volunteer services in the country areas. We hope they continue to flourish, and we hope that ambulance services overall will look positively toward a new future without the antagonism, hatreds and uglinesses that we have seen over recent years.

The Hon. M.J. ELLIOTT: I have been very much an observer in agreements that have already been made in relation to the amendments, so there is not a great deal of point in my taking a lot of time about this matter, because decisions have been made. I am a little confused in relation to one set of amendments. Looking at the alternative amendments made by the House of Assembly to clause 13, I am not at all sure whether there is a clerical error or whether I have just misunderstood it. The line numbers simply do not much up—the line numbers that were in the Bill that left this Council, at least. It appears that they have amended the original clause in the original Bill rather than the one that left our House. I may have misread it, but that is the way it appears to me. That is one area of concern. Members might like to have a quick look at that to see whether I have misread it. The amendments to clause 13, lines 22 and 23, which involve leaving out 'comprised of members who are volunteer ambulance officers', do not appear to relate to the Bill that left this Council.

The Hon. Diana Laidlaw: No, but they relate to the Bill that we were addressing in this Council.

The Hon. M.J. ELLIOTT: Originally, that's correct.

The Hon. Diana Laidlaw: They do relate to that Bill, and they do line up.

The CHAIRMAN: By way of clarification, we are concerned with the original Bill that was before this Council, which was No. 42.

The Hon. M.J. ELLIOTT: I was trying to cross-match it with what we finished with, so that explains the confusion. I do find it interesting that we started off with a committee that was composed entirely of volunteers, and what this Council tried to insist was that half the volunteers be from administration and half be serving volunteer ambulance officers. Now that we have a committee that is not comprised entirely of volunteers, we seem to have drifted even further from the Government's original position in many ways, but that is one consequence of what has happened.

Another rather peculiar thing has happened—and I am not sure what the Government intended in all of this. In clause 12, two members are nominated by a Priory. We had proposed that that volunteer be elected by a serving volunteer ambulance officer, but what the Government now has is a serving volunteer ambulance officer who comes from a panel selected by the advisory committee. There are a couple of peculiarities about this: first, the advisory committee is not made up entirely of volunteers, but now the volunteer representative will be chosen by the committee which in part is not comprised of volunteers; and, secondly, regarding both the serving volunteer ambulance officer and the administration person, it precludes any volunteers who may be involved in city areas.

That may not be such a bad thing, but it does mean that two of the four people who represent the Priory or St John indirectly will be coming on the advice of advisory committees. That is not a bad thing because that will mean that they will be representing country areas, which have been rather afraid they might be subsumed. The only difficulty I see is the fact that the advisory committee, which is putting up the people who are to represent volunteers, is itself not composed entirely of volunteers and that seems to me to be somewhat anomalous. All I am doing is bringing that to the attention of other members of the Committee. But, as I said, basically all the agreements have already been struck, and opposition to either of those changes is essentially pointless at this stage.

The Legislative Council insisted on its amendments Nos 2 and 3; agreed to the House of Assembly's amendments Nos 2 and 3; and did not insist on its amendments Nos 4 and 5.

SUPPORTED RESIDENTIAL FACILITIES BILL

Consideration in Committee of the House of Assembly's consequential amendment:

Clause 22, page 13, after line 4—Insert new subparagraph as follows:

(iii) at any reasonable time, enter and inspect any premises in relation to which an exemption under section 4 applies for the purpose of investigating any matter relevant to determining whether or not the exemption should continue (and may, for that purpose, exercise any of the powers set out below);.

The Hon. BARBARA WIESE: I move:

That the House of Assembly's consequential amendment be agreed to.

The Hon. R.J. RITSON: This amendment makes clear the rights of local government officers who are appointed as authorised officers under this legislation to exercise powers of entry and inspection of the premises that are exempt from licensing under this Act. This amendment is a little redundant, since these officers have power of entry to a wide variety of premises under a number of other Acts (including the Public and Environmental Health Act) and if, having gained entry under that Act, they are dissatisfied with any aspect of the premises they could, of course, give advice and persuasion to the Minister to revoke the exemption.

However, this puts together in clause 22 a stronger statement of the rights of health inspectors or building inspectors, for example, if authorised under this Act, to carry out such entry and inspection and, in a sense, it ties the rights of entry together in one part of this Bill so that the reader is able to see the whole picture in the one part of the Bill instead of having to look at rights under other Acts. I do not think this is overly essential, but it does satisfy some lobbyists. It does no harm, and the Opposition is prepared to support it.

The Hon. BERNICE PFITZNER: I welcome this amendment, although I have probably a slightly different view of this. I feel that the amendment adds something in that it increases the surveillance and monitoring facility of local council officers. Because I am not fully convinced that the Commonwealth officers would have the number of people or the time to monitor Commonwealth subsidised nursing homes as the local council officers have done, I welcome this extra amendment and support it.

Motion carried.

DAIRY INDUSTRY BILL

The House of Assembly intimated that it had agreed to amendments Nos. 1 and 2 and disagreed to amendments Nos. 3 and 4.

The Hon. BARBARA WIESE: I move:

That the Legislative Council not insist on its amendments.

The Hon. M.J. ELLIOTT: I suppose that this is not the sort of amendment on which you go to the wall; it is more a matter of commonsense. The Minister apparently states that he wants more time to consult, and any suggestion that sheep's milk will be blended into cows' milk is such nonsense as not to be taken seriously. The fact is that the cost of production would be so much higher that there would be no incentive to do so, but the Minister says that he needs more time to consult. At this stage, I suppose that the Committee can accept the Minister's insistence.

The Hon. J.C. IRWIN: I support the motion put by the Minister in this place. I acknowledge that the Minister in the other place has accepted two of our amendments (to do with the casting vote of the Chairperson at board meetings and with the audit), so I guess that there is a compromise in the sense that two amendments have now been accepted by both Houses and two will not be, those two being virtually on the same subject of the use of the word 'bovine'. I am disappointed, as is the Hon. Mr Elliott, that this was not accepted by the Minister, but looking at *Hansard* I see that the Minister in the other place has given an undertaking to consider the views of

all people in the industry and to liaise with the shadow Minister with regard to the information he will seek from the industry in relation to milk, particularly the milk from sheep and goats and, I must add, from alpacas.

The number of things that can be milked is fairly mind boggling, and I cannot understand how we debated this whole matter in this place without any information at all from the Minister. He really does not seem to know, other than hearing it in here, that there might be some inclination to mix these various milks with cows' milk, which would then have some problems for the whole calculation of the farm gate price and the price the consumer will pay up to 1 January 1995. I indicate that we support the motion.

Motion carried.

STAMP DUTIES (PENALTIES, REASSESSMENTS AND SECURITIES) AMENDMENT BILL

Adjourned debate in Committee on Bill recommitted.

(Continued from page 1047.)

Clause 10—'Reassessment of duty'—reconsidered.

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

Page 5, line 11—After 'mistake' insert 'of fact'.

I thank the Attorney for his good nature in agreeing to a reconsideration of this, to allow proper discussion to occur, in order to come up with a compromise relating to clause 10. What we have discussed is the tightening of the clause relating to the Commissioner's ability to reassess duty payable when a mistake has occurred in the assessment of duty, under the Act. This amendment seeks to tighten it so that it reads 'a mistake of fact has occurred in assessment of duty.' I am happy with that. I think it tightens the definition sufficiently. As the Attorney-General said, the intention has always been to cover a situation where there has been an error in calculation.

It was never intended to encompass a situation where a Commissioner subsequently changed his interpretation of a particular assessment so that a person could well find that they might be liable to additional duty. I take this opportunity to advise the Attorney that the other matters that were raised in Committee have been the subject of further discussion between the financial institution concerned and the Commissioner of Stamps. I can advise the Committee that the financial institution has been satisfied and has been assured on the matters raised relating to the definition of 'rental business', which definition has necessarily been cast in wide terms to encompass the Supreme Court decision in the recent Esanda case, and also on other matters relating to clause 30 and following, concerning stamp duty in relation to mortgage transactions.

The Hon. C.J. SUMNER: The amendment is accepted.

The Hon. M.J. ELLIOTT: Once again, the numbers are here before it is discussed in this Chamber. However, I would like to know what interpretation a court is going to put on 'a mistake of fact'? Are there mistakes other than simple calculations that indeed may want to be picked up from time to time? For instance, if a building had an usually small amount of stamp duty charged against it, that might be quite legal, but some people might think it is something of a mistake and may be some person at a later stage might think a significant mistake was made and that that was not the proper level of stamp duty for that building. I think mistakes can be made other than mistakes by way of calculation, which should be capable of being reassessed. I cannot help but wonder what the court is going to do at the end of the day, and whether 'a mistake of fact' is really giving a couple more words that lawyers can play around with.

The Hon. C.J. SUMNER: The Government and the Opposition think it clarifies the clause to some extent. There will always be argument. That is why we have these Bills back in this House on a six monthly basis—to plug the holes that the lawyers insist on finding in them. It has been an ongoing process ever since I have been in the Parliament.

The Hon. M.J. Elliott: Will this plug a hole or make one?

The Hon. C.J. SUMNER: I don't know, Mr Chairman. As I say, it is the best we can come up with, in consultation with Parliamentary Counsel, to give effect to the problem that the Hon. Mr Davis raised.

The Hon. L.H. DAVIS: Over the luncheon break we explored a number of options and discussed this with Parliamentary Counsel, and I was satisfied that a mistake of fact does rule out a mistake of law. It is certainly slightly broader than the option that I originally canvassed—an error in calculation. But I think it is sufficiently precise to be capable of interpretation and I am happy with the amendment that has been moved by the Liberal Party.

Suggested amendment carried; clause as suggested to be amended carried.

Bill read a third time and passed.

INDUSTRIAL RELATIONS (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 November. Page 1020.)

The Hon. I. GILFILLAN: I will not speak at length on this Bill, as it is quite a substantial piece of legislation and it will have an extensive Committee stage, and many of the points will be argued and discussed at some length in Committee. I shall comment on some of the significant features in the Bill. I believe that we are seeing the emergence of a new industrial climate in Australia. Despite what one would call a Kennett phobia from unions and the Labor Party that some changes are too dramatic and too fast, I believe there is a groundswell of acceptance that a new climate of cooperation between the work force and employers is in fact being achieved.

Total quality management (TQM) and enterprise bargaining are not dirty words. They are the catchphrases of productive, cooperative evolution in the workplace, and it is occurring. We welcome it. We hope that legislative changes will facilitate rather than obstruct it. It is therefore with some pleasure that I note that certified industrial agreements are a major part of this Bill. The Bill and the draft for industrial agreements open up the opportunity for employers and employees to work

together to evolve an agreement which suits them both and to have that certified so that it is legally binding but is not interfered with or dictated to by the Industrial Commission. During the Committee stage, I will analyse in more detail the very adequate protections in this Bill where agreements can be certified only by the commission if indeed they maintain the standard that currently applies to work in that area.

Proposed new section 113d includes a direction to the commission that it cannot certify an agreement unless it is satisfied that the agreement does not, with respect to the terms and conditions of employment, disadvantage the employees who are covered by the agreement. Subsection (2) on page 15 provides a definition of that disadvantage, as follows:

> For the purposes of subsection (1)(a), an agreement is only taken to disadvantage employees in relation to their terms and conditions of employment if (a) certification of the agreement would result in the reduction of any entitlements or protections of those employees under an award or under an industrial agreement approved under division 1.

Amongst others, that is one very significant protection for employees through the process of certified industrial agreements.

However, I am unhappy to note that there is clear rejection in the Bill of any certified industrial agreement between employers and employees where no registered association or union is involved. The Democrats believe that there is an increasingly valuable role for unions in the industrial scene in Australia based on the skill, cooperation and initiative they can take in the dynamic, new industrial climate. Employees will see that good unions are worth joining because they benefit specifically from that membership in having superior representation, in the provision of intelligent bargaining facility, in the comfort of protection and other services which good unions can provide.

The antithesis of that is where legislation or industrial muscle imposes on reluctant and, indeed, at times resentful employees an obligation to join a union, which then exalts in its manoeuvred position of advantage to do virtually nothing except sit in the sun. Unfortunately, there is a clear impression in certain of the public mind that some unions behave very badly and that they cannot be trusted to be cooperative in the industrial scene. That image will only be reinforced, in our opinion, if legislation allows the inside running for unions to automatically be involved in certified industrial agreements.

The amendments that I will move will seek to allow the commission to certify an industrial agreement where employees in a single business do not belong to a union but want to enter such an agreement. That may be certified by the commission if the UTLC has had guaranteed opportunity to consult with the employees or the employee association involved and to present its opinion and objections to the commission, which must then take those opinions or objections into consideration. In our opinion, that is an optimum situation whereby the risk of an exploited, intimidated work force being pushed into a certified agreement it does not want is avoided and its position is given the scrutiny of a competent body (the UTLC), but it enables the freedom of certified industrial agreements to apply to the whole range of work situations in South Australia.

I turn now to the provision in the Bill for unpaid family leave, which embraces the scope for paternity leave. The Democrats warmly welcome this initiative. It is possibly a belated recognition that parenting is shared between mother and father and paramount is the recognition that the cementing of the people who make up the family in the early days and months of child rearing is so precious in establishing an enduring marital, family structure. Therefore, this provision in the Bill is to be welcomed, and the Democrats support it.

One area which has flushed out more correspondence and telephone calls to me than any other matter in recent times concerns people who do letterbox drops as employees. That is covered in clause 3, which provides:

> Any person engaged for personal reward to distribute any of the following items, namely, newspapers, catalogues or other publications; or advertising or promotional products or materials, where the person distributes the items by going from place to place, or distributes the items to members of the public who are passing by; and the items are supplied to the public free of charge, whether or not the relationship of master and servant exists between that person and the person by whom that person has been so engaged.

It is the intention of the Bill that those people will become employees, but we do not accept that that is an appropriate step. We believe that we must retain the freedom for people in these circumstances to be able to accept, reject or negotiate their own terms and the contracts under which they are prepared to do this work. The safeguard of having the contracts and terms of work supervised by the commission is significant, and I will comment on it in a little more detail in a moment because it also applies to another clause in the Bill which seeks to embrace home workers (clause 4). Proposed new paragraph *(a)* provides that such a person is:

> Engaged or employed to work on, process or pack articles or materials; to perform any clerical service; to solicit funds; sell goods or offer services; or carry out advertising or promotional activities, by telephone, facsimile machine or other means of telecommunication; or to perform any journalistic service or public relation service.

We do not believe that those people should be brought into the context of 'employees' just by virtue of doing that work in their home. We believe that, similar to leafleting, the terms under which this work is agreed to be done can and will be subject to scrutiny by the Industrial Commission.

The Bill quite clearly spells out where the supervision of these agreements will take place (that is in clause 14, which deals with the review of unfair contracts) and provides that the commission will be obliged to review any contract that is unfair or harsh or where the contract is against the public interest.

The Bill also sets out criteria to which the commission may have regard in assessing the appropriateness of the contract and, if it finds in its judgment that the contract is not appropriate, the commission does have the power to order its variance or its being put aside.

I intend to make some amendments to that, so I do not intend to canvass it at great length now. Suffice to say that I believe that the commission's charge in considering these contracts is to look at the fairness and

reasonableness of them but not to be obliged to match them to what would be an award wage for similar work. If that were to stay, we would kill off at its source much of the opportunity for this work to be available to the public (I have amendments on file dealing with that matter). Also, I have on file an anti-discrimination clause so that those principals who feel peeved and have a grudge against individuals or groups of individuals who take their contracts to the commission cannot willy-nilly discriminate against them without incurring a penalty.

The Democrats recognise that we are in the process of seeing quite a substantial transformation of work from the conventional, organised workplace to less conventional locations, and many of them are already, and more will become, their home or a part of the home. With that awareness, I intend in the early part of next year to convene a seminar to seek information on, to discuss and generally review the trends towards extended homeworking or outworking. Members may recall that a week ago I raised the observations of the police with regard to the MFP and the impact on domestic violence (amongst other matters) that the police thought would be exacerbated by increasing from the current situation the amount of so-called homeworking where most people move to other than their home to do their organised work.

We recognise that there is a change, that it is stirring, and that no doubt it will develop further. We must be prepared and plan ahead for it. However, we do not believe that the Bill, as it is currently drafted and which will embrace those people doing that work as employees in a formalised employee-employer relationship, is the appropriate way to go at this stage.

I indicate the Democrats' support for the amendment, which empowers the commission to determine the standard of dress where an employee may be required to work nude or partially nude or in transparent clothing. We believe it is appropriate for the commission to be asked to determine that, and we indicate support for this provision.

In conclusion, I repeat what I have said so often: that we have not had adequate time to consider all the ramifications that flow from the initiatives that are introduced in this Bill. It is a very complicated area of legislation, and I regret that it must be dealt with in such a compressed way at the end of the session. I will be quite clearly positive: I believe, as I said in my opening remarks, that we are at the dawn of a new attitude and a new dynamism about the psychology and atmosphere of the workplace. The move towards certified industrial agreements is one of, if not the, most exciting aspect that is emphasised in this Bill, and it indicates the enthusiasm for all parties involved to look to a newer way in which Australian industry can work. I believe that, properly amended, this Bill can go some way towards facilitating that. I support the second reading.

The Hon. C.J. SUMNER (Attorney-General): Much debate on this Bill has focused on the issue of the deregulation of the labour market. On this important issue there is a stark difference in approach between this Government and that of the Opposition. The aim of the Government's Bill is to promote flexibility and efficiency, and so economic growth, while at the same time ensuring that appropriate protections exist for the weak and vulnerable.

The Government's Bill is designed to draw the industrial parties together and to provide for an ongoing role for the industrial tribunal. At the same time, the Bill will allow much greater flexibility at the enterprise level by allowing parties at that level to agree upon conditions of employment that are tailored to the needs of the enterprise.

I now turn to a number of points raised in the debate. The Hon. Mr Griffin has made much of the proposition that the Bill will disadvantage pensioners and children through the leaflet distribution amendment. Nothing could be further from the truth. The amendment merely gives an opportunity for such persons, if they so desire, to approach the Industrial Court and Commission to set fair rates and conditions for the work they are doing.

In relation to this matter, I would refer members opposite to the 1989 report on outwork in South Australia prepared by Jane Tassie, entitled *Out of Sight Out of Mind*, which found that outworkers, including leafleters, received very low rates of pay, had problems with underpayment of wages and late payment for work completed, suffered detrimental health impacts from the work and had little or no reimbursement for costs incurred.

This is the sort of thing that is going on within the distribution industry, and it is for this reason that the Government believes that leaflet distributors should have access to the commission to get a fair deal. Many of these leaflet distributors are engaged full time on leafleting seven hours a day, six days a week. Access to the Industrial Court and Commission will enable leafleters to argue for and obtain enforcement of fair wages and conditions.

I turn now to the amendment extending the definition of outworkers. On this issue there appears to be some confusion. On the one hand, it is pleasing to note the Hon. Mr Griffin's support for broadening the definition of 'outwork' to include clerical services. However, the honourable member's opposition to the extension of the protections under the Industrial Relations Act to computer-based duties, telephone promotion and freelance journalism is of concern.

In opposing protection for these groups, the Hon. Mr Griffin suggested that the Government's amendment will affect charitable organisations or genuine independent contractors in some detrimental way. This is not factually correct. Nothing in this Bill in any way will undermine the capacity for genuine independent contractors to continue freely to conduct their businesses. Furthermore, it needs to be pointed out that the scope of the outwork provisions is restricted to persons engaged or employed under a contract for the purpose of a trade or business of another and so do not affect work that is of a voluntary nature for charitable organisations.

In relation to the provisions in the Bill which empower the Industrial Commission to regulate or prohibit of the performance of work where the employee is required work nude or partially nude or in transparent clothing, I note that the Hon. Mr Griffin has sought clarification on the distinction between 'nude' and 'partially nude'. The honourable member also suggested that the clause in its current form might give rise to litigation. The purpose of

the Bill's wording on this matter is to allow the commission and the parties adequate scope and flexibility to argue the merits of a case on a commonsense basis having regard to the particular circumstances of the working environment concerned.

The Hon. Mr Griffin also sought clarification of the difference between a registered agent and an agent and whether agents employed by unions and employer organisations have to be registered, and the procedural details involved with giving agents recognition.

A registered agent as defined in the Bill is an agent who may represent a party for fee or reward in matters pursuant to sections 15 and 31. This distinction is a necessary requirement of the Legal Practitioners Act 1981. The Bill does not interfere with the rights of any person employed by a registered association of employees or employers or therefore any registered association acting as an agent as they currently exist under the Act.

Lastly, in relation to the superannuation records amendment, I understand that the Hon. Mr Gilfillan proposes to move an amendment on this point during the Committee stage which I believe will address the Opposition's concerns and which the Government may support subject to a check on the drafting.

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. K.T. GRIFFIN: I ask the Attorney-General whether the Government has in mind any particular date by which the Bill will be proclaimed to come into operation on the basis that it passes. Also, can he indicate whether any consideration is being given to the suspension of any of the provisions of the Bill so that it does not come into operation on that date?

The Hon. C.J. SUMNER: If I may, I will take that on notice and respond later.

Clause passed.

Clause 3—'Interpretation'.

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

Page 1, lines 18 to 25—Page 2, lines 1 to 16—Leave out paragraphs (a), (b), (c) and (d).

I note that this amendment is the same as that of the Hon. Mr Gilfillan. I am pleased that he will be taking the same position as I am on this provision. I dealt with the issue at some length in the second reading debate, so I do not think it is necessary to reiterate all the arguments against the extension of the definition of 'employee'. Suffice to say that what the amendment seeks to do is remove that part of the clause which has created a great deal of public consternation among business and ordinary people relating to the distribution of free newspapers, catalogues, leaflets, promotional material and promotional products.

I argued during the second reading debate, and I reiterate now, that there has been no call for this provision. The consequence will be that many South Australians will be adversely affected in that it will potentially affect those who are the actual distributors of material, as well as the businesses which rely on that promotional activity, and thus the people who are employed by them. The Liberal Party has a very strong view opposed to the extension of the definition of 'employee', and that is the reason for the amendment.

The Hon. I. GILFILLAN: I have a similar amendment on file. We believe it is the right way to go to retain the freedom of people who are doing this work to come to their own arrangements with their principals, coupled with the capacity to have those arrangements fettered by the commission. I have had many letters and telephone calls from people about this matter, some of whom have complained about what they believed to be unfairly low rates, resulting in maybe a $2 or $3 per hour work rate.

So, although many were pleased with the opportunity to do the work and were quite satisfied with the rate of pay because it suited their rate of getting around, their age and their capacity to do the work, there is still a proportion who have grievances and who said that it was much too low a rate for the work that they were asked to do. With the further amendments and the contents in the Bill for unfair contracts to be reviewed, we believe that the safeguards are in place, and therefore a formalised employee/employer relationship should not be established for this work.

The Hon. C.J. SUMNER: The Government opposes the amendment for the reasons that I have already outlined.

Amendment carried; clause as amended passed.

Clause 4—'Outworkers'.

The Hon. K.T. GRIFFIN: Again, I note that my opposition to this clause is also reflected in the amendments of the Hon. Gilfillan. I expressed concern at the second reading stage for the proposed extension of the definition of 'outworker'. I think it will have some fairly significant ramifications for individuals who work from home and who prefer the flexibility which that allows, even if it might not be at the same rate as someone who must travel to an office or place of work to undertake the same sort of activities.

In the Liberal Party's view, there is no basis for such an extension, whether it be to those who telephone-solicit or tele-market or those who perform journalistic or public relations service. It is appropriate that they remain outside the scheme of this legislation and, accordingly, I indicate opposition to the clause.

The Hon. I. GILFILLAN: The Democrats have a similar amendment on file and, as indicated previously, we do not believe that it is appropriate for people doing this work to be brought into a formalised employer/employee structure. There is the potential for employers to coerce employees to move to a home situation to do work of this kind which they had previously been doing in a centralised workplace employer/employee relationship, and we are conscious of that. However, the same protection is available as there was for the leafleters, that unfair contracts can be reviewed by the commission, so there should be a safe underpinning so that exploitation to an extent should not be able to occur.

I must repeat, though, it is my intention to convene the seminar to look at the expanding implementation of home working early next year because it is a trend. In fact, it is a trend the Democrats welcome, provided it is done appropriately and without undue pressure and not stifling the opportunity for a free contract arrangement to be entered into willingly by parties who want to have that arrangement continued. So, we will support the

amendment moved—obviously because I have one on file—to delete clause 4, but I emphasise again that we are confident that the security against exploitation is there in the access to the Industrial Commission to review the contracts of employment for these people.

The Hon. C.J. SUMNER: The Government supports the clause for reasons already stated.

Clause negatived.

Clause 5—'Tenure of office.'

The Hon. K.T. GRIFFIN: I indicate that the Liberal Party does not support the clause. What it seeks to do is to extend the retiring age of judges of the Industrial Court from 65 up to 70 years of age. It is correct that that then brings it in line with the retiring age of judges in the Supreme Court and District Court, but apart from that consistency no persuasive argument has been advanced as to why their retiring age should be increased.

The Hon. C.J. Sumner: It saves the status of the judges.

The Hon. K.T. GRIFFIN: We've got status of judges: I am not arguing against that.

The Hon. C.J. Sumner: What about the age discrimination legislation?

The Hon. K.T. GRIFFIN: The Attorney-General interjects about the age discrimination legislation, and he has said on a previous occasion that he does not intend to make any changes to the retiring age of judges.

The Hon. CJ. Sumner interjecting:

The Hon. K.T. GRIFFIN: Well, he did say that he does not intend to make any change, and I suppose if one looks at that objectively, that is contrary to the general principles of equal opportunity and legislation against discrimination on the basis of age. I accept that in areas such as this, where you can only get rid of judges of the Supreme Court and the District Court by resolution of both Houses of Parliament, you cannot have an unlimited period of tenure. We did have that in the early days of the State, in fact, up to about 15 or 20 years ago, where judges retired whenever they wanted to, and Sir Mellis Napier remained on the bench until well into his 80s. So, there is a distinction there. My recollection is that there is no provision in the Industrial Relations Act as to the means by which judges of the Industrial Court are dismissed, and to that extent they are not on the same footing as judges of the Supreme Court or the District Court. But on the basis of no persuasive reason to extend it, we indicate opposition to the clause.

The Hon. C.J. SUMNER: The Government believes the clause should be retained. The presidential members of the Industrial Relations Commission are equivalent to judges. In fact, the present Industrial Relations Commission Industrial Court is styled as a justice; that is his official title. Also regarding a point raised by the Hon. Mr Griffin on the tenure of office, section 12 of the Industrial Relations Act clearly states that neither the President nor the Deputy President of the court can be moved from office except in the manner in which and on the grounds in which a judge of the Supreme Court is by law liable to be removed from office. So, they have exactly the same status in method of removal, and it is, therefore, consistent that they have a retirement age of 70 years, which is the retirement age for judges of the Supreme Court and the District Court.

The Hon. I. GILFILLAN: I support the clause.

Clause passed.

Clause 6 passed.

Clause 7—'Certain copies dutiable.'

The Hon. K.T. GRIFFIN: The Opposition is not persuaded that there should be any further change to section 15. The amendment to section 15 does seek to provide a fairly heavy onus upon defendants higher than presently included in the principal section. There seems to be no justification at all for this amendment, because what it means is that if an inspector advises the defendant that a claim in the inspector's opinion is justified and that the defendant has no reasonable ground on which to dispute the claim, and in the circumstances the defendant should have satisfied the claim without putting the claimant to the trouble of taking proceedings to establish the validity of the claim, it appears that, even if the defendant is successful in defending the claim, costs may be awarded. That seems to be basically unfair and unreasonable. It is designed to intimidate rather than allow a defendant to exercise his or her rights and to prejudice the defendant, even if the defendant is ultimately successful. It is on that basis that we express concern about this amendment. We will oppose the whole of the clause, mainly upon that basis.

The Hon. C.J. SUMNER: We support it.

Clause passed.

Clause 8 passed.

Clause 9—'Jurisdiction of the commission.'

The Hon. R.I. LUCAS: This question has been raised in another place and by some people of me, and I seek the expert guidance of the Attorney and his adviser as to the potential ramifications of the clause. There has been much debate about the intention of this clause in relation to what are known as topless restaurants, and I do not intend to discuss that: people's views are clear. But the drafting of this amendment, which says that the jurisdiction of the commission includes the ability, by award, to regulate or prohibit the performance of work where the employee is required to work nude or partially nude, or in transparent clothing, has been raised by a number of members and I have had a query from a member of the Media and Entertainment Arts Alliance, the union that used to be Actors Equity, in relation to young actresses, some of whom probably take the same view that, through economic circumstances, they are forced to work on soapier such as *Chances* and various other soapies on the commercial networks.

The Hon. I. Gilfillan: I'm surprised you've got time to watch it.

The Hon. R.I. LUCAS: I am informed about these. There are some on channel 2 and even more on SBS, but basically they are soapies, and a number of them are required to work as actresses, topless, bottomless, partially nude, in transparent clothing, etc. What is the Attorney's view as to the jurisdiction of the commission should the Media and Entertainment Arts Alliance seek to take up the case with the commission on behalf of workers within the alliance, in relation to workers—and it is their job, they are paid for it; we might see it as performance, but it is their work—being required to work nude, partially nude or in transparent clothing?

The other issue that has been raised with me is that of a young woman who works as a photographic model. We

see all these leaflets that are dropped in our letterbox by leaflet droppers—

Members interjecting:

The Hon. R.I. LUCAS: Those contractors, yes, which advertise women's underwear, swimsuits and a variety of things such as that. Again, a number of the models are required to work partially nude, in those cases, although not nude, but certainly in transparent or revealing clothing. It may well be the alliance that represents photographic models. I seek a response from the Attorney on those two broad areas, as to whether the commission would have jurisdiction to rule in a similar fashion to that in which it may rule in relation to the Liquor Trades Employees' Union in relation to topless restaurants.

The Hon. C.J. SUMNER: The answer to the question is, theoretically 'Yes', if it is a registered association and has access to the commission on behalf of its members, but one must use commonsense in this area. While, theoretically, action could be taken in the circumstances outlined by the honourable member, it is unlikely that, if the work that was involved was artistic or, perhaps, modelling, prohibitions would be made by the commission. Theoretically, that option is available.

The Hon. K.T. GRIFFIN: That is really the essence of it, that it is so broad that all these options are available if someone wishes to take advantage of the provision at some time in the future. That is what I was trying to demonstrate when I referred in my second reading contribution to the fact that the description 'partially nude, or in transparent clothing' might raise technical litigation as to what it really means. Obviously, there is not much that anyone can do about it short of putting in a Shorter Oxford English Dictionary definition and trying to exclude. I indicated during the second reading debate that it was the preferred position of the Liberal Party that this be left to award negotiation, but I do not propose to take that any further.

Clause passed.

Clauses 10 and 11 passed.

New clause 11a—'Further powers of the commission.'

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

Page 7, after line 5—Insert new clause as follows:

11a. Section 29 of the principal Act is amended—

(a) by striking out from subsection (1)(c) 'to enter the premises of an employer subject to the award, or any other premises where employees of the employer may be working' and substituting 'to enter the premises of an employer subject to the award when any member of the association works, or any other premises where employees of the employer who are members of the association may be working,'.

(b) by striking out from subsection (1)(c)(iii) ', or are eligible to become members,'.

and

(c) by inserting after subsection (8) the following subsection:

(9) The commission must not, by award, direct that preference in employment be given to a member of a registered association over a person who is not a member of a registered association.

Under section 29 of the principal Act, the commission has a range of powers, including the power by award to authorise an official of a registered association of employees, subject to such terms and conditions as the commission thinks fit, after giving the employer notice prescribed by the award, to enter the premises of an employer subject to the award or any other premises where employees of the employer may be working, to inspect time books and wage records of the employer at those premises, to inspect the work carried out by the employees and to note the conditions under which the work is carried out, and to interview employees, being employees who are members or who are eligible to become members of the association in relation to the membership and business of the association.

My amendment seeks to limit that power of the commission. It is part of a range of amendments that I have on file, which are not necessarily interdependent, so later ones will be moved whether or not this amendment is successful, but it is related to the rights of employees, the rights of employers and, in some respects, to the issue of conscientious objection. I propose that the power of the commission to include within an award some provision about entry to premises should be limited to a power to enter the premises of an employer who is subject to the award, where any member of the association of employees works, or any other premises where employees of the employer who are members of the association may be working. It is clearly related to the welfare of the members of that association, where they may be employees working in premises covered by the award. The subsequent amendment to subsection (1)(c)(iii) removes the power of the commission to empower union officers to enter premises merely where there are persons who are eligible to become members; in other words, to solicit members.

There are provisions in the principal Act for industrial inspectors and authorised officers to enter premises to check on work conditions, timebooks, and a range of other matters that are required, by awards, to be kept. It has always seemed to me to be appropriate that those persons who are independent of either employer or employee or of an association of employers or an association of employees should be entitled to undertake the inspectorial powers of the legislation. The power to enter, which may be granted under section 29, is potentially open to abuse. The third amendment is to provide that the commission must not, by award, direct that preference in employment be given to a member of a registered association over a person who is not a member of a registered association. The Liberal Party feels very strongly about this and we have moved amendments on previous occasions, because we do not believe that there is any principle of equity which would allow the commission to order preference in employment for members of a registered association.

I repeat the point I made in the second reading debate, that only 30 per cent of employees are members of registered associations, and it seems to be a disproportionate amount of influence and interest which this legislation empowers the commission to recognise in associations of employees. In our view, there seems to be no basis at all, and certainly no justice in a situation where, in those industries and workplaces where there is preference for unionists, a person must pay a union fee before being able to work. So that is an issue that we feel very strongly about. It is, of course, coupled with the repeal of section 29a (provided in the next amendment), which specifically authorises power to grant preference to unionists. There are two issues that are best dealt with

separately—paragraphs (a) and (b) as one part of the proposition, and paragraph (c) as that which relates specifically to the power of the commission in relation to the awarding of preference to unionists.

The Hon. C.J. SUMNER: The Government opposes the amendments. The first restriction on rights of entry, as posed, would, for example, stop the unions being able to sign up members or interview non-unionists in those workplaces where they had not previously had an opportunity to discuss the issue of trade union membership with the workers concerned. South Australia's good industrial relations record has been built on cooperation, and proposals such as this really serve no purpose and would undoubtedly create friction. Further, it should be noted that access to rights of entry have to be argued for in the Industrial Commission before they are granted.

On the second point, the question of preference to unionists has been debated on many occasions previously in this Chamber and in the public arena. The Government believes that unionisation should be fostered and encouraged where applicable and that provisions of giving preference to unionists do that. Accordingly, the proposal of the honourable member is opposed.

The Hon. I. GILFILLAN: The Democrats oppose the amendments. It is significant that this Bill does not include the normal clauses which seek to introduce some form of compulsory unionism, or quite emphatic preference to unionists. It is basically on the grounds that, by exhaustion, the Government has come to realise I think that the Democrats will not support moves to provide for quasi-compulsory unionism. The complaint from those who are eager to seek legislation to promote specific preference to unionists has been that the current Act virtually gives them no opportunity to exercise it. Therefore, for those who fear that the current Act is giving an unfair advantage to unionists, I do not think that the reality bears that out. Both these matters were not part of the original Government Bill. I have not given them exhaustive consideration, but the Democrats oppose the amendments as they are presented.

The Hon. K.T. GRIFFIN: In respect of the provisions of the Bill, I draw the attention of the Hon. Mr Gilfillan that section 29a(l) of the principal Act already provides:

> The Commission may, by an award, direct that preference be given, in relation to such matters, in such manner and subject to such conditions as are specified in the award, to such registered associations or members of registered associations as are specified in the award.

Further, subsection (2) provides:

> Notwithstanding the terms of a direction under subsection (1)—
>
> (a) an employer is only obliged by the direction to give preference to a member of a registered association over another person where all factors relevant to the circumstances of the particular case are otherwise equal; and
>
> (b) no employer is obliged by the direction to give preference to a member of a registered association over a person in respect of whom there is in force a certificate issued under section 144.

The fact of life is that where there is provision for preference to unionists that preference is normally given because of the concern about the influence which might be exerted by the association if that preference is not given. Of course, numerous closed shops are still operating around South Australia, which quite obviously operate under that provision, or a provision of the Federal legislation.

The Committee divided on the new clause:

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

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

Majority of 1 for the Noes.

New clause thus negatived.

Clause 12—'Unfair dismissal.'

The Hon. K.T. GRIFFIN: It may be appropriate at this point to raise an issue about registered agents, although I could mention it later. Paragraph (c) provides that a legal practitioner or registered agent may represent a party to proceedings under this section for fee or reward. Has any consideration been given to the standards that will be applied to registered agents, what disciplinary procedures are likely to be available and whether the issue of liability for negligence has been considered and, in that context, whether it is proposed that, as part of the standards, there will be some obligation upon persons proposing to become a registered agent to take out professional indemnity insurance as legal practitioners are required to do? I am relaxed about dealing with this matter under clause 34, if that is more appropriate.

The Hon. C.J. SUMNER: Yes.

Clause passed.

Clause 13 passed.

Clause 14—'Review of unfair contracts.'

The Hon. I. GILFILLAN: I move:

Page 10, lines 5 to 7—Leave out paragraph (d).

This amends the conditions under which the commission can look at contracts believed to be unfair, harsh or against the public interest. With the Chair's indulgence, I will speak to all the amendments that apply to this matter. Paragraph (d) provides that the commission may have regard to:

> Whether the contract provides total remuneration that is, or is likely to be, after deducting reasonable business expenses, less than that of an employee performing similar work.

I was conscious that that would be the only avenue for protection and access to a fair go by people who are on the thin end of the wedge in so far as having a bargaining position with major companies such as Salmat, progress press, etc., and that in its capacity to review contracts the commission should take into account a series of factors which the Bill spells out, such as the relative strengths of the bargaining positions, any indication of undue influence or pressure, or whether it appears to be an effort to evade the provisions of an award.

I recognise that they are reasonable aspects for the commission to take into consideration, but I do not accept that the commission should be directed to compare it with what might be a wage applying to similar work in place. I am convinced that, if that were followed, most of this piece work would disappear, it would be at too expensive a rate. If paragraph (b) were to be retained, in

the case of leafleting, the commission could look at the wage of an employee of Australia Post and determine that an hourly rate of in excess of $12 would be an appropriate comparison. I am advised, and I have every reason to believe, that that would virtually throttle the activity that has spread amongst hundreds of South Australians as part-time work, that is, letterboxing.

Although I urge that the commission should look at what is a fair and reasonable return for this work, it must also take into account what would be the effect of that rate on the principal. It is important that the goose that lays the golden egg is not killed because the price is too high. My next amendment will be to insert a new subsection which gives the commission this direction to have regard to fair and reasonable remuneration, but also to regard the difficulties experienced by the principal because of serious or extreme economic adversity. In fact, this does mirror some of the phraseology which is already in State awards.

The Hon. T.G. Roberts: How do you check the principal employer's financial position?

The Hon. I. GILFILLAN: It would be the commission's obligation to do that and to hear argument from the principal that a certain rate either puts at risk the viability of the business or makes an unfair impact on the profitability of that business. I will also seek to add some sections to prevent discrimination by the principal against people who are doing the work and who take their contracts to the commission for review.

It is quite reasonably argued that where persons have taken contracts to be reviewed by the commission they would be vulnerable to retribution from vicious-minded employers or principals who want to deter this type of activity. The new provision that I have on file will make it an offence for that discrimination to occur. There is even a new subsection of reverse onus as to motive so that, where an aggrieved worker has established in the Industrial Court that there was discrimination and that that discrimination was unfair, they would not then have to prove to the court that it was because of their taking the contract to the commission that this discrimination took place. It involves a reverse onus—in other words, the principal (or the defendant) would need to show that it was not in any way attached to the worker's taking the contract to the commission for review.

The Hon. C.J. SUMNER: The Government opposes this amendment. Paragraph (d) is taken from the current Federal Act. We have attempted to line up the criteria for reviewing a contract with the Federal legislation and would therefore argue that this paragraph should remain, for the reasons that have been previously outlined.

The Hon. K.T. GRIFFIN: In the short time that I have had the amendments and been able to consider them, the conclusion I have reached (and the position I will be putting) is that I will support the omission of paragraph (d). I also indicate that we will support the inclusion of subsection (4a), but we do not support the other amendments.

One of the concerns about giving access to the commission under section 39 is that, although it is presently part of the Bill and allows contractors access, the Liberal Party has never supported that access. In fact, when section 39 was inserted we opposed that insertion. The difficulty as I see it is, by widening the jurisdiction to allow the Industrial Relations Commission to examine a range of contracts which are not employer and employee contracts, that that is *de facto* recognition that the commission has a much wider jurisdiction, and one could then logically seek to argue an extension of the jurisdiction of the commission even to things such as subcontractors in the building and construction industry, and that is something that we certainly do not support.

If the Hon. Mr Gilfillan's first two amendments are carried, I indicate that I will oppose all the amendments in the Bill and the clause as amended, for the reasons which I indicated in my second reading speech. At that stage I referred to representations made by the Housing Industry Association and the Chamber of Commerce and Industry, which conclude that they are concerned that the redrafting of the section rendered each of the grounds disjunctive instead of additive, as is the case at present. The Employers Federation indicated that, by picking up some of the Federal provisions and not picking up others, the result will be that the commission in South Australia will operate on a different set of standards from that of the Federal Commission, and the South Australian provisions will be even more onerous than the Federal provisions. If the clause is amended, I indicate that we will still oppose it.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 10, after line 25—Insert new subsection as follows:

(4a) In framing an order under this section, the commission must have regard to the principle that fair and reasonable remuneration should be paid for work but, despite this, the commission must also have regard to any difficulties that would be experienced by the principal because of serious or extreme economic adversity if the principal were required to make payments at or above a certain level.

This amendment, which I described previously, not only instructs the commission as to the principle of fair and reasonable remuneration in the contract to be assessed but also as to the effect that would have on the principal's economic situation, so as to avoid destroying a business because a rate of pay was set too high.

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

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 10, after line 28—Insert new subsections as follows:

(6) A person must not—

(a) discriminate against another person;

or

(b) advise, encourage or incite any person to discriminate against another person, by virtue only of the fact that the other person—

(c) is a person who has made, or proposes, or has at any time proposed, to make, application to the commission under this section;

or

(d) is a person on whose behalf an application has been made, or is proposed, or has at any time been proposed, to be made, under this section;

or

(e) is a person who has received the benefit of an order under this section.

Penalty: Division 8 fine.

(7) If in proceedings for an offence against subsection (6) all the facts constituting the offence other than the ground of the defendant's act or omission are proved, the onus of proving that the act or omission was not based on the ground alleged in the charge lies on the defendant.

(8) A court by which a person is convicted of an offence against subsection (6) may, if it thinks fit, on application under this subsection, award compensation to the person against whom the offence was committed for loss resulting from the commission of the offence.

I previously outlined the anti-discrimination amendment, which this is and which has a reverse onus factor as to motive. I believe that it is as far as we can go in placing in legislation protection for those who are doing contract work so that they will not be legally discriminated against as a result of taking these contracts to the commission for review.

The Hon. C.J. SUMNER: This is supported by the Government.

The Hon. K.T. GRIFFIN: It is opposed by the Opposition.

Amendment carried; clause as amended passed.

Clauses 15 to 25 passed.

New clause 25a—'Conscientious objection.'

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

Page 12, after line 18—Insert new clause as follows:

25a. The following section is inserted after section 108a of the principal Act:

> 108b. A provision in an industrial agreement under this Division that requires a person to give preference to a member of a registered association will be taken not to require the person to give such preference over a person who has a genuine conscientious objection to being or becoming a member of a registered association or to paying fees to a registered association.

Having been unsuccessful in removing from the principal Act the provision allowing the commission to grant preference to unionists, I must say that there are a number of areas throughout the principal Act as well as this Bill where I think there ought to be some strengthening of the recognition of conscientious objection. The principal Act (section 144) allows the Registrar who is satisfied that a person has by reason of religious belief a genuine conscientious objection to being or becoming a member of a registered association or of paying any fees to a registered association to grant a certificate in the prescribed form, which is then a certificate of conscientious objection. That person in relation to whom the certificate is issued is not then required to join an association.

That, I would suggest, does not take far enough the consequences of conscientious objection. So, in relation to industrial agreements, which are dealt with in Part VIII of the principal Act, I want to provide that where there is a provision in an industrial agreement that requires a person to give preference to a member of a registered association that will be taken not to require the person to give such preference over a person who has a genuine conscientious objection to being or becoming a member of a registered association or to paying fees to a registered association—remembering, I suggest, that a person who is the subject of a certificate as to conscientious objection should not be treated any differently from a person who is a member of a registered association.

Presently, I would suggest, it is certainly not clear in an industrial agreement where preference is given to members of a registered association that this may be a preference even against a person who is a conscientious objector. What I want to do in relation to this (and there are other clauses which seek to do a similar thing in relation to other parts of the principal Act) is enshrine in the legislation a recognition of that situation so far as conscientious objectors are concerned.

The Hon. I. GILFILLAN: I am not clear on just what grounds the Government is opposing the amendment. I am not persuaded to support the amendment. I think the issue deserves further attention, but I am reluctant to open it up in this Bill other than to deal with conscientious objectors in regard to discrimination by unions.

The term 'genuine conscientious objection', certainly in the Opposition's mind, covers more than that just based on religious grounds. I have not asked the Hon. Trevor Griffin what, if any, the Liberal intention is in relation to interpreting genuine conscientious objection, but my feeling is that we are not in a position at this stage to support that amendment.

The Hon. K.T. GRIFFIN: I am surprised that the Government is not supporting it, and the same applies to the Hon. Mr Gilfillan. I should have thought that it was consistent with section 144, which deals with conscientious objection, and the fact that that section deals with the means by which a person may become recognised as a genuine conscientious objector and that that will be the factor which determines the application of this—

The Hon. C.J. Sumner: You are trying to remove that.

The Hon. K.T. GRIFFIN: Perhaps I had better make that clear then. I am sorry if there is a misunderstanding and I did not make it clear. I have an amendment to remove section 144; that was consequential upon section 29a being removed. I will now not be seeking to repeal section 144 of the principal Act, so that section will remain the basis upon which conscientious objection will be determined and granted. On that basis, therefore, looking at section 29a, which remains in the Act and which deals with preference to members of a registered association, no employer is obliged by the direction to give preference to a member of a registered association over a person in respect of whom there is in force a certificate issued under section 144.

However, I think it is necessary in relation to an industrial agreement, remembering that section 29a deals with an award. It is important, if we are to carry through the concept of conscientious objection, to ensure that that is also recognised in relation to industrial agreements and certified agreements. There is one other area, and we will deal with that when we get to it. All it does is carry through the consequences of section 144.

The Hon. Mr Gilfillan said he was not sure what we had in mind with genuine conscientious objection and it may be, because I had not made clear that I was not proposing to repeal section 144, that he may have misunderstood that there is a direct relationship between

this amendment, which I am proposing, and section 144 which will characterise—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: If that is the difficulty, I have no problem with making reference to section 144. In the light of the fact that I was unsuccessful in relation to the repeal of section 29a it is now necessary to amend proposed section 108b by deleting all words in the fourth line of that proposed section from and including, 'who has a genuine conscientious objection to becoming a member of a registered association or to paying fees to a registered association' and in their place inserting, 'in respect of whom there is enforced a certificate issued under section 144.' So, the whole proposed new section would read:

A provision in an industrial agreement under this division that requires a person to give preference to a member of a registered association will be taken not to require a person to give such preference over a person in respect of whom there is in force a certificate issued under section 144.

That is in the same form as is presently in section 29a, and it clears up any difficulty that there might be in interpreting the provisions of section 144. If that is clear, I seek leave to move my amendment in that amended form.

Leave granted.

The Hon. T. CROTHERS: If no other award is in place, for example, in the case of the Casino, the Casino agreement is the only award that can cover those workers in this State. If that worker is exempt from the Casino agreement, under what award are his wages and other conditions determined?

The Hon. K.T. GRIFFIN: It is not an award: it is an industrial agreement.

The Hon. R.R. Roberts: If it is a registered agreement, it has the same status before the commission.

The Hon. K.T. GRIFFIN: It has the same status as an award: I do not disagree with that. But if this provision is not included what it means is that if there is a preference to unionist clause—and I am talking only about a preference to unionist clause—then a person who is a conscientious objector, and is recognised as such under section 144, could be discriminated against and not employed. I would suggest that a person who is a conscientious objector under section 144 probably would not want to work in the Casino anyway because the conscientious objection is based on religious grounds. But supposing it was not the Casino but some other place, that employee and employer would reach their agreement about the terms and conditions which would apply to his or her employment. There may be some provision of the Act of which I am not aware that would cover that, but that is my on-the-spur-of-the-moment reaction to the question raised by the Hon. Mr Crothers.

New clause as amended inserted.

Progress reported; Committee to sit again.

[Sitting suspended from 6.1 to 7.30 p.m.]

CONSTRUCTION INDUSTRY LONG SERVICE LEAVE (MISCELLANEOUS) AMENDMENT BILL

At 7.30 p.m. the following recommendations of the conference were reported to the Council:

As to Amendment No. 1:

That the Legislative Council do not further insist on this amendment.

As *to Amendments Nos 2 and 3:*

That the House of Assembly do not further insist on its disagreement to these amendments.

As to Amendment No. 4:

That the Legislative Council do not further insist on this amendment and the House of Assembly makes the following amendment in lieu thereof—

Clause 6, page 4, line 26—

Leave out subsection (5) and substitute new subsections as follows:

(5) The board is subject to direction by the Minister.

(6) A direction given by the Minister under subsection (5) must be in writing.

(7) The board must cause a direction given by the Minister to be published in its next annual report.

and that the Legislative Council agree thereto.

Consideration in Committee of the recommendations of the conference.

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

That the recommendations of the conference be agreed to.

The Hon. J.F. STEFANI: I wish to report that in the conference there was general consensus about the intention of the legislation, which is to address particular problems experienced by certain groups that were not meant to be included under the Act, and the Minister gave an undertaking that he would make a statement in the Lower House. I guess that I am reporting that the intention of the Minister is to address the issues that caused the concerns we were trying to address in this Chamber by legislation and, at the earliest opportunity, the Minister will introduce legislation to correct the situation, so that the particular concerns will be addressed and that the companies involved will obtain relief from the provision of the existing legislation.

The Hon. C.J. SUMNER: Although I was not a member of the conference, I understand that the Minister will make a statement in another place.

Motion carried.

INDUSTRIAL RELATIONS (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

Adjourned debate in Committee (resumed on motion).

(Continued from previous column.)

Clauses 26 to 29 passed.

Clause 30—'Insertion of new division.'

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

Page 13, lines 30 to 32—Leave out subsection (1) and substitute:

(1) An industrial agreement under this division may be made—

(a) between a single employee and his or her employer; or

(b) between an association of employees and any other association, or any person.

This clause inserts a new division, 'Division II: Certified Industrial Agreements', but the present form of the division focuses upon certified industrial agreements between a registered association of employees and any other association or person in relation to any industrial matter. It does not address a certified industrial agreement between an individual employee and an employer. I addressed this issue in my second reading contribution, as did the Hon. Mr Gilfillan. The Liberal Party is of the view, and the Hon. Mr Gilfillan appears to share that view, that there ought not be the limitation on certified industrial agreements which presently appears in the Bill.

In addition to that basic approach, we express concern that, if the amendment does not pass, we will have a situation where a workplace may have a certified industrial agreement involving some employees who are members of a registered association with no capacity for the employer to make an agreement with other employees. The scheme of the amendments basically is to ensure that we open up the opportunity for employers and employees, as well as registered associations of employees, to be parties to industrial agreements. This first amendment is the forerunner to establishing that fairly significant change to the concept of certified industrial agreements.

The Hon. I. GILFILLAN: As has been observed, I have an identical amendment on file, as far as leaving out subsection (1) is concerned.

The CHAIRMAN: Although at the bottom of the Hon. Mr Gilfillan's amendment there appear the words 'in relation to any industrial matter', which are not in the Hon. Mr Griffin's amendment.

The Hon. I. GILFILLAN: If we restrict it to leaving out subsection (1), they are identical. There are subtle differences in the text, and I am advised by Parliamentary Counsel that mine is the more refined of the two amendments—not necessarily a deliberate determination by me personally. If that is the case, the Hon. Trevor Griffin may seek to confirm it.

The Hon. K.T. Griffin: I could seek leave to amend mine to make it the same as yours.

The Hon. I. GILFILLAN: Yes, I see. Speaking to the amendment in general terms, the intention is to open up the availability of certified industrial agreements which are a flexible and potential improvement to working circumstances for the employer and the employee, in terms of both the job and productivity. Safeguards are built into it, to which I referred in my second reading contribution, further on in the clause. As we are at the moment discussing only this first part of the amendment, to leave out subsection (1), I indicate Democrat support for that. I understand from an interjection that the Hon. Trevor Griffin will be seeking to amend his amendment to make it identical to the one I have on file. Obviously I have no objection to that. If he seeks to amend it that way, I will support it.

The Hon. K.T. GRIFFIN: Subsequent consultation indicates that during the day there has been additional refinement to the drafting. I seek leave to amend my amendment as follows:

By adding at the end 'in relation to any industrial matter'.

Leave granted; amendment amended.

The Hon. C.J. SUMNER: The Government opposes this amendment. It seeks to expand access to the new certified agreements provisions to agreements between single employees and single employers. Opening up these provisions in this way would make many employees without proper trade union representation vulnerable to exploitation by unscrupulous employers and would give rise to the potential for agreements based on short-term labour cost cutting measures, at the expense of longer run dynamic strategies aimed at delivering genuine flexibility and a mobile and highly skilled work force. The Government is opposed to this amendment.

The Hon. K.T. GRIFFIN: I dispute the basis upon which the Attorney-General says that this is undesirable. One has to look further in my series of amendments, and it is clear that I have an additional amendment, after line 31:

Subject to this Division, the Commission must certify an agreement under this Division between an employee and an employer if, and must not certify an agreement unless, it is satisfied that the agreement does not seriously jeopardise the interest of the employee.

I note that the Hon. Mr Gilfillan takes that one step further in his amendment, to also make reference to the Commission ensuring that the employee has entered into the agreement freely and without the exertion of undue influence or pressure or the use of unfair tactics. So whichever form of the amendment is subsequently accepted, there is a built-in protection for employees against that exploitation. To suggest that employees can only be protected by the intervention of a trade union I think really denies the reality of the situation. As I said during the second reading debate, most employers regard their employees as the most valuable resource and do have a good working relationship between employer and the employee, so that they are not exploited. In fact, many of them are better off without the intervention of a trade union than those who are. So I resist the proposition which the Attorney-General has put. The protections which subsequently we will consider will certainly remove that concern.

The Hon. I. GILFILLAN: This is a very important aspect, and I want to emphasise that I have disagreement with both the Government and the Opposition on this matter. I think that time will show that the constructive, dynamic union movement will find that it is wanted, that it is asked to be part of certified industrial agreements because of its negotiation skills and the general confidence that employees will have in it. But what I resent is this implication that without the unions there will be this victimisation and exploitation of hapless employees by unscrupulous employers. It is absolute rubbish. As the Government knows, safeguards are locked into its own Bill. The bottom is in the Bill. There is no way that this commission can certify an agreement that is going to screw the worker. Yet, they trot around parading this nonsense that every group of workers cannot be left with enough responsibility to negotiate their own deal. It is rubbish, and having listened to that rubbish—and the ones who are saying it are some of the extremists on South Terrace—

The Hon. T. Crothers interjecting:

The CHAIRMAN: Order!

The Hon. I. GILFILLAN: If it had been left to negotiation by those with level heads and those with some sense in Government I am sure that we would have an avenue for people in the single business and single location areas that were not covered by unions to create and have established their own certified industrial agreements.

But, no, that was not to be. So there has been this driving pressure so that nothing can be certified in the State unless there is a union involved up front. I resent that. I believe it is important that we as—let us hope—a State that is looking at a new era of industrial relations recognise that the people who will be party to these agreements will be so willingly. In those circumstances the groups of employees who wish to enter into a certified agreement without having a union involved should be entitled to do so.

However, I have sought to develop amendments that would make it palatable to the Government to the point where it could accept that there would be certification of agreements by employees who are not members of the union. Those agreements would be subject to assessment by the UTLC. It would be required that the circumstances be provided whereby the UTLC could have consultation with those employees. They have that right because of my refusal to accept the Liberals' amendment: the unions have the right to go into those workplaces and have discussions at any time. But, no, that is not enough assurance for this lily-livered Government. It will not accept that pattern.

However, I am determined that we will make an effort to get this in place, because it is right; this is correct; this is right basis on which to proceed. I am prepared to support the Hon. Mr Griffin's now amended amendment, because it mirrors the wording of mine, and I indicate that at the next level of amendment we diverge, because the Liberals attempt to take the bottom out of this. They are prepared to let any negotiation go through; there will not be any safety net. But there is a safety net in this Bill and it will stay there. I read it during my second reading contribution, but I will repeat it so that those who are prepared to listen can hear it. It provides:

Approval of the commission

113c. (1) Subject to this division, the commission must certify an agreement under this division if, and must not certify an agreement unless, it is satisfied that—

(a) the agreement does not in relation to their terms and conditions of employment, disadvantage the employees who are covered by the agreement;

Under subclause (2) 'disadvantage' means:

For the purposes of subsection (1)(a), an agreement is only taken to disadvantage employees in relation to their terms and conditions of employment if—

(a) certification of the agreement would result in the reduction of any entitlements or protections of those employees under an award, or under an industrial agreement, approved under division 1;

It is secure and safe. The commission is also instructed not to jeopardise the interests of the employees. How much more do they want? What they want is to insist that unions will be in there willy-nilly. Unions will be in there because they deserve to be there.

I know enough unions to know that they are prepared to take that—that is, the people who I believe have a level head. They know they will get there and, if they are given a fair go, that they will be welcomed by workers, particularly those who have had one crack at an agreement and found they did not get on too well. They will be invited in there. But this pushing them in and refusing to accept that any agreement can be certified unless a union is involved is biased and short sighted. Having said that, I support the amendment.

Amendment as amended carried.

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

Page 14, line 8—Leave out 'or'.

This and the next amendment should be taken together. The substantive amendment is after line 9 to insert 'or' and then a new paragraph (d). I have given consideration to the drafting, and I am informed that that which the Hon. Mr Gilfillan has proposed fits in better with the structure of the clause. We seek to do exactly the same thing, so I am prepared to defer to the honourable member and to give him an opportunity to move his amendment.

The Hon. I. GILFILLAN: I appreciate the honourable member's comments. I move:

Page 14—

Line 8—leave out 'or'.

After line 9—insert—

or

(d) in the case of an agreement between an employer and one or more of the employer's employees—the terms and conditions of their employment,.

The Hon. C.J. SUMNER: They are consequential.

Amendments carried.

The Hon. I. GILFILLAN: I move:

Page 14—

Line 12 leave out 'be'.

Line 13—after '(a)' insert 'be'.

Line 14—after '(b) insert 'be'.

After line 15insert—

(ba) indicate the scope of operation of the agreement, specifying the employee or employees, or class or classes of employees, who are covered by the agreement;.

Line 17—after'(c)' insert 'be'.

Amendments carried.

The Hon. K.T. GRIFFIN: My amendment seeks to add a new subsection (a1). It focuses only on the responsibility of the commission in the context of this Bill and the principal Act, and provides that the commission is to be involved in certification but provides that it may only certify if it is satisfied that the agreement does not seriously jeopardise the interests of the employee. The Hon. Mr Gilfillan's amendment goes further and wants to give the commission power to determine whether or not the agreement has been entered into freely and without the exertion of undue influence or pressure or the use of unfair tactics. I do not think that anyone can really quarrel with that. I doubt if it is necessary but on this occasion I am prepared to defer to the honourable member and allow him to move his amendment for the sake of saving time.

The Hon. I. GILFILLAN: I appreciate that. I move:

Page 14, after line 31—

Insert new subsection as follows:

(a1) Subject to this Division, the Commission must certify an agreement under this Division between an employee and an

employer if, and must not certify an agreement unless it is satisfied that—

(a) the employee has entered into the agreement freely and without the exertion of undue influence or pressure, or the use of unfair tactics;

and

(b) the agreement does not seriously jeopardise the interests of the employee.

The Hon. Mr Griffin has aptly described the amendment.

Amendment carried.

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

Page 14, line 33—After 'Division' insert 'to which an association of employees is a party'.

This is consequential on an earlier amendment.

Amendment carried.

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

Page 15, lines 16 to 22—Leave out paragraph (e).

There is a fundamental difference between the Hon. Mr Gilfillan and me in respect of this amendment. I want to delete paragraph (e) of new section 113d, which provides that the commission must certify an agreement if, and must not certify an agreement unless, it is satisfied that the parties to the agreement include each registered association of employees whose membership includes one or more employees who are covered by the agreement or, if there is no registered association of employees that qualifies, under subparagraph (i), each registered association of employees that is able to represent the industrial interests of the employees who are covered by the agreement.

I take the view that there is no need for any prerequisite that the registered association should be involved or, if there is no registered association that qualifies, that each registered association of employees that is able to represent the industrial interests of the employees who are covered by the agreement be involved—and that opens the door wide. If the employees are not members of a registered association, why should it be a prerequisite to the recognition and certification of an agreement that a registered association that is able to represent the industrial interests of the employees is to become involved? I think that narrows the opportunity for industrial agreements. It certainly extends the influence of the registered association of employees, and there is no reason why that should occur.

In an earlier statement, the Hon. Mr Gilfillan painted me and the Liberal Party in a light which is not quite fair in relation to registered associations, because what I said earlier during the second reading debate in an exchange with the Hon. Ron Roberts is that the unions will have to work to gain the support of people they want to represent. They will have to become more professional and less confrontationist. I have no problem at all with responsible unions representing employees, if that is what employees want, in these sorts of negotiations, but I resist any element of compulsion—any requirement that associations of employees be involved before an agreement can be certified. I prefer my amendment to the proposition of the Hon. Mr Gilfillan.

The Hon. I. GILFILLAN: I move:

Page 15, lines 16 to 22—Leave out paragraph (e) and insert:

(e) the parties to the agreement include each registered association of employees whose membership includes one or more employees who are covered by the agreement;.

We are agreed on leaving out paragraph (e), but my amendment seeks to replace certain words—and I will outline briefly what that is intended to achieve. I recognise the sensitivity to what I regard somewhat loosely as Kennett phobia. There is a healthy concern that unregulated and unprotected situations would allow exploitation of a work force which, from economic circumstances and unequal bargaining power, could be pushed into agreements that are not to their advantage. However real that may be, I am not in a position to judge, but I recognise that the fear is a reasonable one.

Bearing that in mind, and in an attempt to underpin the confidence of the Government and the trade union movement in South Australia that they could open the door to some certified agreements in which there is no trade union directly involved, and in these early days of introducing certified agreements into our industrial scene, we are prepared to recognise that, where there is any union cover, the Act will enable that union to be a party to the certified agreement even if the union does not represent all the work force.

There is, of course, a proportion of non-unionised employees in the workplace. So, there is a place in the sun in the vast majority of potential certified industrial agreements. However, what I am insisting on in the trend of my amendments is that, where there is a single business and in that single business there is no member of a union, with certain safeguards in place, that business can have an industrial agreement which will be certified subject (as I said before) to the UTLC not only having an opportunity to give an opinion to the commission, which must be taken into consideration, but also having access to the employees for consultation about the agreement. I support the Hon. Mr Griffin's amendment.

The Hon. C.J. SUMNER: The Government opposes both amendments for the reasons that were previously given. However, it has a choice, and the least undesirable from our point of view is the amendment of the Hon. Mr Gilfillan.

The Hon. Mr Griffin's amendment negatived; the Hon. Mr Gilfillan's amendment carried.

The Hon. I. GILFILLAN: I move:

Page 15, after line 22—Insert—

(ea) if no registered association of employees is a party to the agreement and the agreement applies only to a single business, part of a business or a single place of work, the parties have entered into the agreement freely and without the exertion of undue influence or pressure, or the use of unfair tactics;

This is another amendment that puts in place what I have already outlined, namely, that there be the option for a workplace with no union representative to establish its own certified industrial agreement. This amendment requires the commission to certify an agreement under this division.

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

The Hon. T.G. ROBERTS: What happens when half the work force in a certain premises agrees and the other half does not?

The Hon. I. GILFILLAN: In the circumstance posed by the Hon. Terry Roberts, I cannot see any intelligent commissioner certifying agreement.

The Hon. K .T. GRIFFIN: We are prepared to support the amendment, which goes part of the way towards what

we believe is appropriate, and it is more desirable than not having it there.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 16, line 9—Leave out '(i) or (ii) (as the case may be)'.

I suspect that this is consequential. This is a drafting amendment as a result of my earlier amendment so, having been successful in that, the numbers (i) or (ii) are no longer relevant.

The Hon. K.T. GRIFFIN: As it is consequential I can indicate it is no longer appropriate for me to move to delete subsection (4), so I will not proceed with that and I indicate support for the consequential amendment moved by the Hon. Mr Gilfillan.

Amendment carried.

The Hon. I. GILFILLAN: I move:

Page 16, line 11—Leave out 'relevant association of employees' and substitute 'registered association of employees whose membership includes one or more employees who are covered by the agreement'.

This amendment is consequential.

Amendment carried.

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

Page 16, lines 25 to 32, and page 17, lines 1 and 2—Leave out paragraph (b).

These are consequential amendments, as I understand it. I note that the Hon. Mr Gilfillan has identical amendments on file. The commission may determine that subsection (1)(e), which is the one we have just dealt with, does not apply to the extent that a requirement to include a particular registered association of employees is inappropriate, having regard to the objective of achieving a coherent national framework of employee associations, and paragraph 2 is in a similar form.

I reject the concept of a coherent national framework of employee associations. I think the recent decision by the International Labour Organisation in Geneva about the size of unions and the Federal legislation which seeks to create super unions is a case which can be argued very much in favour of the proposition which I am putting.

I think each case has to be judged on its merits and, if an agreement is ideal for a small business in South Australia and may not be part of what might be the objective of achieving a coherent national framework of employee associations, I say, 'So what?' South Australia has to become competitive and, if we can do things better and if we can enter into agreements between employers and employees that enable us to become better in the competitive sense nationally and internationally, I think we ought to strive for that. I see paragraph (b) of subsection (5) as being an impediment to that, and I therefore move these amendments.

The Hon. I. GILFILLAN: Once again I have an identical amendment on file. However, I would like to indicate the variation in my reasons with those of the Hon. Trevor Griffin. My principal reason for it is that if it stays it frustrates what I see as the optimum way of introducing certified industrial agreements, and that is for the Commissioner to determine which union most suitably represents the workplace. That ought to be purely on an objective judgment of the circumstances pertaining to that particular workplace and the industry involved.

I believe that, if paragraph (b) stays in, with an overriding objective of achieving a coherent national framework of employee associations, we may finish up with a minority representative union being given a dominant role which may well foster ill will, resentment and the very thing that we do not want to see occur at the start of a certified industrial agreement. I personally believe that there may very well be a good argument for a coherent national framework of employee associations. I am not sure whether such a framework does exist; if it does I have not seen it. It may be a bit of a conundrum to the Commissioner in trying to refer to a framework which may well be rather rubbery or changing in its complexion from time to time. I do not want to belittle the aim; I think we do want a coherent national framework of employee associations, but in this context I do not think it is appropriate to have it in the Bill, and I support the amendment.

The Hon. C.J. SUMNER: The Government opposes the amendment. The effect of this amendment would be to break down the structures in place in the Act which provide mechanisms for a complementary relationship with the Commonwealth Act on the coverage of registered associations and the minimisation of demarcation disputes.

Amendment carried.

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

Page 18, after line 2—Insert—

(aa) in the case of an agreement between an employee and an employer—the parties rescind the agreement by notice in writing to the commission.

Amendment carried.

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

Page 18—

Lines 18 and 19—Leave out paragraph (b) and substitute:

(b) if an association is a party to the agreement, all members for the time being of the association.

Line 21—After 'as regards' insert 'the employer and employee or'.

Page 19, line 5—After 'unfair to' insert 'the employee or'.

Page 20, line 2—After 'under this Division' insert 'to which an association of employees is a party'.

These are all consequential amendments.

Amendments carried.

The Hon. I. GILFILLAN: I move:

Page 20, line 31—After 'association' insert 'in so far as the agreement has applied to those employees by virtue of their membership of that association'.

This amendment and what follows subsequently is the guarantee for UTLC supervision of a certified agreement where there is no union cover.

The Hon. K.T. GRIFFIN: I support it as a consequential amendment.

Amendment carried.

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

Page 20, after line 33—Insert new section as follows:

Conscientious objection

113ja. A provision in an industrial agreement under this Division that requires a person to give preference to a member of a registered association will be taken not to require the person to give such preference over a person who has a genuine conscientious objection to being or becoming a member of a registered association or to paying fees to a registered association.

This is similar to an earlier amendment that I moved in relation to industrial agreements, except that I shall move it in an amended form. It picks up the point that was made when we discussed the earlier amendment, which was to insert new section 108b. The last two lines will be deleted and in their place will be the words 'in respect of whom there is in force a certificate issued under section 144.'

The CHAIRMAN: You are seeking leave to move the amendment in that form?

The Hon. K.T. GRIFFIN: Yes.

Leave granted.

The Hon. K.T. GRIFFIN: It seeks to provide that in relation to a certified industrial agreement there is the same recognition of a conscientious objector and his or her position as there is under other industrial agreements. The same reasoning applies now as it did on the earlier occasion.

Amendment carried.

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

Page 20, lines 34 to 37—Leave out section 113k.

I do not see why the commission should consider whether it should consult with appropriate peak councils representing employer or employee associations. Where there is an agreement it seems to me that it is an agreement between the parties, and no outside bodies, other than the commission, need to be involved. It smacks of a proposition that someone other than the commission, a big brother, ought to be keeping an eye on what the parties are doing when they do not necessarily wish that to happen. I notice that the Hon. Mr Gilfillan has a proposition which seeks to involve the United Trades and Labor Council. I shall be speaking at more length on that amendment because I oppose it.

The Hon. I. GILFILLAN: I oppose this amendment. With respect to the mover, I think it is a futile amendment. How can anyone take exception to the words 'the commission must consider whether it should consult'? Apart from the fact that it is a pretty innocuous amendment to start with, what is it expected to achieve? In the drafting, does anyone in their right mind believe that the commission will be dictated to by this clause into doing something it does not want to do? The text is:

In exercising its powers under this division, the commission must consider whether it should consult with the appropriate peak council representing employer or employee associations and may consult with any such council.

It is totally its own master.

The Hon. K.T. Griffin: Why should they do it?

The Hon. I. GILFILLAN: Why shouldn't they; why shouldn't they think about it?

The Hon. K.T. GRIFFIN: Because they are not interested; they haven't got any interest in that.

The CHAIRMAN: Order!

The Hon. I. GILFILLAN: I don't intend to enter into a barrage of interjectory argument on this matter. The clause is innocuous and achieves nothing and, in any case, it backfires because the employers do not have a peak council. So, really only one organisation—and that happens to be the UTLC—could be considered in this. It is fatuous and innocuous, so it stays in. It will be followed I hope by an amendment which adds a little more purpose to it all, and I intend to speak to that when I move it.

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

The Hon. K.T. GRIFFIN: I can assure members that I am in my right mind. I do not think my proposition is fatuous. The fact is that peak councils are given an entree, and I ask why they should be involved in determining whether or not an agreement ought to be certified. Where the agreement has been reached, there are powers for the commission itself to exercise checks on the way in which the agreement has been entered into and to make its own judgment as to whether or not it ought to be certified. Why involve any other organisation?

Amendment negatived.

The Hon. I. GILFILLAN: I move:

Page 20, after line 37—Insert new subsection as follows:

(2) If the parties to an agreement do no include at least one registered association of employees, the commission must not certify the agreement unless the commission is satisfied that the United Trades and Labor Council has been given a reasonable opportunity to consult with the parties to the agreement and the commission has taken into account any reasonable objection raised by the United Trades and Labor Council in relation to the agreement.

There it is in black and white, the guarantee to the nervous Nellies in the Labor Party or in the trade union movement; there is an absolute safeguard added in that nothing shonky, nothing exploitative, is likely to be certified in this process. I believe it is reasonable to legislate to minimise the fear and the concern in people's minds that this process, which is a new process for South Australia, could be used to exploit workers in certain workplaces, and I am conscious of that. That is why I have asked for this amendment to be drafted, so there is the guarantee that the UTLC will have the opportunity to consult with the parties—and quite obviously its major concern will be with employees—and have discussions, and in most cases we hope they would be amiable. If there are objections—and I would suggest even constructive observations—made by the UTLC to the commission they will be taken into account.

The Hon. C.J. SUMNER: This is not the Government's preferred position, obviously, as we expressed earlier in relation to single employee/employer contracts. Although not the preferred position, given that the Committee has determined that there can be such contracts, this amendment at least provides some potential for protection.

The Hon. K.T. GRIFFIN: The Opposition opposes this proposition absolutely. It really undermines all of the good work that has been done by the Hon. Mr Gilfillan in seeking to provide the commission with the responsibility to make decisions about whether or not the agreement has been entered into freely, whether there has been any undue influence or pressure or whether there has been any use of unfair tactics.

The commission has to assure itself that it does not seriously jeopardise the interests of the employee. The Hon. Mr Gilfillan is saying, 'Do not trust the commission to do that; give the United Trades and Labor Council a reasonable opportunity to consult with the parties to the agreement. 'It might be one or two employees who do not want to be represented by the trade union movement who say, 'We have a good deal and we do not want you

involved.' Yet the United Trades and Labor Council is given an opportunity, in fact a power, to become involved in the consultative process and then the commission has to take into account any reasonable objection raised by the UTLC in relation to the agreement.

That is a total ambush of the provisions that we have sought to include in the legislation to enable the parties to make a decision. Do they want registered associations—employers or employees—involved and, if they do not and if the commission then has to exercise its own discretion and make its own judgment about the issues and the way in which the parties have entered into the agreement, let it do it. This undermines the whole process and I indicate that we view it strongly and will oppose it strenuously. If we do not succeed on the voices, we will divide.

The Hon. I. GILFILLAN: The Hon. Trevor Griffin ignores the fact that no-one is dictating to the commission in this amendment. The commission is its own master but this amendment reassures people so that they can have confidence that these arrangements will have taken place in the most open and unpressured climate. So that the widest range of assessment of the agreements can be taken into account, this amendment reassures the organised labor movement in South Australia that nothing shonky is being done behind backs or with pressure imposed, because they have access to the one area where the unions are not involved.

It is only in this area where this extra qualification or protection would apply. I have confidence that the commission will make its own deliberate judgment and not be dictated to or pressured by the UTLC through the effects of this amendment. As I said before, principally the amendment is in place for reassurance.

I believe that in the process of a few years of enlightened industrial relations in South Australia unions will be asked to come in by groups of employees to help them work through to the best set of certified agreements that they can get.

The Hon. K.T. GRIFFIN: If the local hardware store wants to enter into an agreement with its employees—there might be half a dozen of them and none of them are members of any registered association of employees—and the local hardware store does not belong to an employer association and they have reached an agreement, which is what they want and it meets the criteria set down in the legislation, why should the United Trades and Labor Council be given a legal right to go down and consult with the parties to the agreement? They have no right to get into the workplace.

The Hon. I. Gilfillan: They have it now.

The Hon. K.T. GRIFFIN: If there are employees who do not want to talk to the union, they just say, 'Scrub off', and if the employers do not want to talk to the Employers Federation or to the Chamber of Commerce and Industry they say, 'We don't want you involved'. But this gives them a legal right. They have to have a reasonable opportunity to consult with the parties to the agreement, whether at the workplace, at the commission or wherever else. It introduces a new element of influence and potential interference. It seems to me that it is an unnecessary involvement.

I understand that the Hon. Mr Gilfillan wants to reassure the trade union movement, which is concerned and nervous about enterprise bargaining, but the fact is that there are also many people who are nervous about the unions becoming involved. Many employees are nervous about that. It seems to me quite unreasonable to put up this proposition. I accept that the Hon. Mr Gilfillan in good faith puts it up as an olive branch to the trade union movement, but I say that it compromises the potential for this scheme that we are setting out in the legislation to work effectively.

The Hon. J.F. STEFANI: I endorse the comments of my colleague the Hon. Mr Griffin. My experience with industrial relations commissions is that, where deliberations are arrived at, quite often the union movement has flaunted the direction of the commission—it has actually ignored the direction and recommendations of the commission. I am not saying that all unions are like this, but some members of a union will perceive this as the opportunity to be involved, to raise objections and to interfere in arrangements that could otherwise be entered into by parties who are quite happy to proceed on the basis of an agreement.

The Committee divided on the amendment:

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

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

Pairs—Aye—The Hon. T.G. Roberts. No—The Hon. J.C. Burdett.

Majority of 1 for the Ayes.

Amendment thus carried, clause as amended passed.

New clause 30a—'Conscientious objection.'

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

Page 20, after line 38—insert new clause as follows:

Amendment of s.144—Conscientious objection

30a. Section 144of the principal Act is amended by striking out subsection (3) and substituting the following subsection:

(3) An employer or association must not—

(a) discriminate against a person on the ground that the person is the holder of a certificate under this section;

or

(b) advise, encourage or incite any person to discriminate against another person on the ground that the other person is the holder of a certificate under this section.

Penalty: Division 8 fine.

This is a variation of subsection (3) of section 144, to broaden it, to clarify issues of discrimination. It provides that an employer or an association must not discriminate on the ground that the person is the holder of a certificate relating to conscientious objection, or advise, encourage or incite any person to discriminate on that same ground. I think it is an appropriate extension of the conscientious objection provisions. Concerns have been expressed to the Liberal Party about the limited discrimination provision in the present subsection (3), and it seems to me that it is appropriate to provide additional protection for conscientious objectors in relation both to employers

and associations. I suggest that that is consistent with amendments that we have already moved in relation to industrial agreements and certified industrial agreements.

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

New clause inserted.

Clause 31 passed.

New clause 31a—'Unlawful acts against employee according to whether or not the employee is a member of an association.

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

Page 21, after line 2—Insert new clause as follows:

158a.(1) For the purpose of this section a person discriminates against another person—

(a) by not allowing the person to work or by dismissing the person from employment or arranging for his or her dismissal;

(b) by denying the person access, or limiting the person's access, to opportunities for promotion, transfer or training in employment, or to any other benefits connected with employment;

(c) by subjecting the person to humiliation or denigration; or

(d) by injuring the person in any other way in respect of his or her employment or potential employment.

(2) An employee must not threaten, intimidate or coerce another employee by reason of the fact that the other employer is or is not a member or officer of an association of employees.

Penalty: Division 7 fine.

(3) A member or officer of an association of employees who—

(a) aids, abets, counsels, or procures the commission of an offence against subsection (2); or

(b) threatens, intimidates or coerces another person with a view to influencing the person to take action that would constitute an offence against subsection (2),

is guilty of an offence.

Penalty: Division 6 fine.

(4) A member or officer of an association of employees who threatens, intimidates or coerces an employee or prospective employee by reason of the fact that the employee or prospective employee—

(a) is not a member of that association of employees;

(b) is a member of another association of employees; or

(c) is not a member of any association of employees.

is guilty of an offence.

Penalty: Division 6 fine.

(5) A member or officer of an association of employees who threatens, intimidates or coerces an employer with a view to influencing the employer—

(a) to discriminate against an employee or prospective employee;

or

(b) to threaten, intimidate or coerce an employee or prospective employee

by reason of the fact that the employee or prospective employee—

(c) is not a member of that association of employees;

(d) is a member of another association of employees;

or

(e) is not a member of any association of employees

is guilty of an offence.

Penalty: Division 6 fine.

(6) If in proceedings for an offence against this section all the facts constituting the offence other than the ground of the defendant's act or omission are proved, the onus of proving that the act or omission was not based on the ground alleged in the charge lies on the defendant.

(7) Where a person is convicted of an offence against this section, the court may, in addition to any penalty it may impose, order the convicted person to pay compensation to a person who has suffered loss in consequences of the offence.

(8) This section does not derogate from any other right under this Act or law of a person against whom an offence has been committed.

This is a quite extensive amendment, to address the issue of voluntary membership. The Liberal Party has had for a long time a policy of voluntary unionism. The Hon. Mr Roberts and I had an extensive exchange of words about freedom of choice during the course of the second reading debate.

The Hon. R.R. Roberts: Freedom of association.

The Hon. K .T. GRIFFIN: Freedom of association, freedom of choice—if people want to belong to an association, whether it be employer or employee, or not, they are entitled to make that choice. Whether they want to vote or not to vote, again, is a matter of choice. But in respect of the associations of employers and employees we feel very strongly about the principle and believe that it ought to be enshrined in the legislation. It is not inconsistent with section 29a, which relates to preference to unionists. If this amendment is not carried on this occasion we will, of course, continue to endeavour to ensure that there is at some time in the future voluntary unionism.

As the Hon. Mr Gilfillan has said during the course of the debate, and I have made some observation on it, when you have freedom to make a decision, or freedom of choice, whether it be freedom of association or not to associate, as the case may be, it then means that those who seek to gain membership in this instance will have to work for it, they will have to earn it, and not accept that in some workplaces there will be closed shop arrangements and in others there will be preference to unionists, all of which is not an inducement to providing the sorts of services which modem economic circumstances and workplace environment require. I urge support for the amendment.

The Hon. C.J. SUMNER: The Government opposes this amendment. It would have the effect of making unlawful such activities as pickets in cases where unionists were demonstrating against non-unionists in their workplace. The reality is that in the industrial arena there has to be some give and take. The penalties approach of the Opposition that underlies this amendment has in the past proven to be totally unworkable, and the application of fines has aggravated disputes rather than brought about settlement. The Government opposes what it sees as the adversarial nature of this amendment, which seems more akin to what is happening in Victoria at the moment than what has generally been accepted in South Australia.

The Hon. I. GILFILLAN: I oppose the amendment. I repeat: Democrat policy is to support voluntary membership of unions or registered associations. There are aspects in the industrial legislation which the Democrats do not believe should be there—and that is

my personal preference. I believe that there are other measures that should be in there. But we cannot create the perfect industrial world overnight in this manner. I confess that I have not had a chance to explore fully the significance of the amendment and all its ramifications. In previous debates on previous Bills, we have, with give and take, reached a situation in the current Act where we have, to the extent that is possible, still held on to the principle of voluntary unionism. But I repeat that I do not believe it is a perfect world, but I do not think that on its own this amendment would do much more than stir up a lot of industrial disputation, and I am not prepared to support it.

The Hon. T. CROTHERS: I did not intend to enter this debate but, after having heard the nonsense emanating from the shadow Attorney-General this evening, I drink it is time someone stood up and put the other side of the coin. All these spurious reasons and pieces of rationale that the Hon. Trevor Griffin puts forward in respect of union membership are a nonsense. What he really wants to do, of course, is to destroy trade unionism. That is what it is all about. There is no other reason why, irrespective of what he puts up, he does what he does, and he does it continually.

It does not surprise me one bit when I see a number of peak employer organisations in this country that are now standing up and taking to task Hewson—the Federal Leader of the Party to which the Hon. Mr Griffin belongs—because of the like policies that he is espousing and embracing. These are the heads and chiefs of employer bodies, and peak bodies at that. This is occurring at a time when Australian industry, indeed industry globally, is changing its very nature. Who does Griffin think workers can get to speak for them when we are watching changes in the very essence of the old format that has been the glue for industrial relations since the industrial revolution?

Who does Mr Griffin and his cohorts think will be the guarantors of how effective that change will be? Can members imagine an employer negotiating awards for 5 000 separate people and doing justice to each and everyone of them? Of course, they cannot. As the Hon. Mr Gilfillan said, we will end up with some form of industrial luddism, because people on the factory floor will hit back, but not through the orderly manner of the industrial courts. They will hit back in the way they did before the trade union movement was formed, that is, by being Luddites within their own factories, by doing what German and other workers did to the German war factories in the Second World War by acts of sabotage.

If we pursue that which has been referred to persistently by Mr Griffin in the name of industrial advancement, we will look for trouble, and I will not be very far behind it. It will not be organised trouble and it will not be from a work force that we can deal with, that has elected a committee to speak on their behalf. We will see the type of trouble that has not been witnessed in any English-speaking country since the 1830s. It is not coincidence that time after time, in nation after nation, where dictators and despots have wanted to seize control of the reins of power, the very first thing they have done is do away with *bona fide* organised labour. I know that Mr Griffin does not mean that but, whether or not he means it, that is what he will get and I will be kind to him and put that down to his lack of having to work at the coalface in a hands-on position in industry. If he had to do that, he would not suggest this measure or think that only good will come out of it.

I realise that time is of the utmost importance in order to process the Bill, but I urge Mr Griffin and any of his cohorts who are of similar mind to think very carefully. If they think that beating the big drum of anti-trade unionism will be the panacea to all the problems that they may confront if and when they are elected to Government, they are mistaken. Those of us who saw Japan and Germany emerge shattered as a result of the Second World War also saw a well-unionised Germany and Japan rise phoenix-like out of the ashes to head up the new types of industry that have been gaining momentum rapidly and taking their place across the past few decades of our history.

If we want that transfusion of industrial technology to go ahead in Australia in as patient and peaceful a manner as possible, we must not stick our head in the sand and believe that doing away with the trade union movement will achieve that aim. In the United States, only 15 per cent of the work force are members of the trade union movement, and no economy could be in more disarray than is that country's. For heaven's sake, let us pull together on the one issue in which we all have a common interest, that is, to ensure the best possible future for Australia. The way forward is not the way of confrontation. The way forward is the way of getting together, each contributing what we have to contribute.

To do away with the trade union movement is not the answer, because there would be no-one left to negotiate for the workers as they face an avalanche of change over the next decade. The Federal Government has given employees away by the hundreds of millions of dollars that it has spent on new training and new training methods. Let us not stuff it up by trying to score political points when what is really needed is a statesman-like approach to effect a unity of purpose that this nation has not seen in 100 years.

The Committee divided on the new clause:

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

Noes (11)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, 1. Gilfillan, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, Barbara Wiese.

Majority of 1 for the Noes.

New clause thus negatived.

Clause 32—'Employers to keep certain records.'

The Hon. I. GILFILLAN: I move:

Page 21, line 7—After 'superannuation fund' insert 'of a prescribed kind'.

This amendment simplifies the obligation to report in relation to superannuation funds. There are two types of superannuation fund: one is an accumulation fund with regular, set contributions and the other is a defined benefits fund to which contributions are made when necessary to keep the fund fully-funded, and in the latter case there is a need to report to employees. So that these obligations can be prescribed and set by regulation, this amendment will allow for the difference for regular

reporting to be made for defined benefit funds while preserving the regular reporting for the normal accumulation funds.

The Hon. K.T. GRIFFIN: I support the amendment. Subsection (8) got into the principal Act I think last year or the year before, at which stage the Liberal Party expressed concern about it because of the additional work that was involved. Ideally one should seek to repeal subsection (8) but, as I understand it, what is in the Bill is preferable to what is in the Act. The amendment provides that there has to be a conscious decision on the part of the Government to prescribe a particular superannuation fund, and that will give us an opportunity to review it when the regulations are made.

Amendment carried; clause as amended passed.

Clause 33 passed.

Clause 34—'Return of former position.'

The Hon. K.T. GRIFFIN: Can the Attorney-General give me a run-down on what the Government has in mind for these regulations?

The Hon. C.J. SUMNER: I am not sure whether I can give the honourable member much of a run-down. The honourable member asked what were the criteria that the Government envisaged would be included in regulations determining who might become registered as a registered agent. The criteria to be satisfied before a person would be entitled to be registered as an agent under the Act and the associated procedures involved in registration have not been determined at this point in time.

The peak employer and employee associations were consulted extensively in the development of this Bill around the general concept. All parties have been assured that detailed further consultation will continue to occur on this matter in the development of necessary regulations. It is important to note, however, that the proposed amendments to section 176 of the Act provide some guidance as to the issues to be considered. Such issues include qualifications, experience and a person's previous registration as a legal practitioner (if applicable).

I further draw to the honourable member's attention that proposed section 176(3)(e) authorises a court to establish or vary a code of conduct that must be observed by any registered person in the performance of any function under the Act. I am advised that it has not been determined at this stage whether there will be any requirement for professional indemnity insurance, but obviously that is a matter that will have to be considered in the consultation process.

The Hon. K.T. GRIFFIN: The Attorney-General has indicated that there have been and will continue to be consultations with employer and employee groups. Is it proposed that there will also be some consultation with the Law Society?

The Hon. C.J. SUMNER: I do not know whether or not that was envisaged, but I do not see that there is any problem with that occurring if it is thought to be a good idea, and I will ensure that that happens.

The Hon. K.T. GRIFFIN: Can the Attorney-General indicate who is envisaged as keeping the register and who will be responsible for surveillance of persons who might be on that register?

The Hon. C.J. SUMNER: The Bill provides that the register will be maintained by the Industrial Registrar and, presumably, the Industrial Registrar will be responsible for ensuring that the regulations are complied with, and the court will also be responsible for ensuring that the code of conduct that is to be established by the court is followed.

The Hon. K.T. GRIFFIN: It is essentially a court based scheme, rather than a departmental based scheme?

The Hon. C.J. SUMNER: That is correct, except that the qualification criteria are to be done by regulation.

The Hon. K.T. GRIFFIN: I understand that there has not been an*y* development of codes of conduct, criteria and other matters at this stage. It seems, therefore, that the registered agent concept may not be put in place for some time. Is the Attorney-General able to indicate what sort of target date the Government has in mind for the promulgation of these regulations?

The Hon. C.J. SUMNER: I am advised that the officers involved think that three or four months would be sufficient to prepare the regulations. I will take the opportunity of answering the honourable member's question on the proclamation date for the Bill. It is envisaged that it could probably be proclaimed in about two months, but it may be that this clause will remain unproclaimed until the regulations and other procedures are in place.

Clause passed.

Clause 35 passed.

Clause 36—'Insertion of schedule.'

The Hon. K.T. GRIFFIN: I want to raise several questions in relation to the second schedule—the family leave provisions. During the course of the second reading debate I raised a question which I do not think the Attorney has answered, but it may be that I just did not hear the answer. Why does the Government appear to be adopting the New South Wales family leave provisions rather than moving for some greater level of uniformity with the Federal provisions which, I understand, have been determined by the Full Commission of the Commonwealth Industrial Relations Commission?

The Hon. C.J. SUMNER: I am advised that it is mainly the Federal principles although some of the New South Wales provisions have been picked up, as indeed has the existing adoption leave award from South Australia. It was considered that what was brought together was appropriate for South Australian circumstances.

The Hon. K.T. GRIFFIN: Some people involved in the industrial law area have suggested to me that the whole scheme will be largely unworkable with the introduction of paternity leave but I am not raising that as the issue. What I want to do is explore with the Attorney-General how the inter relationship between maternity and paternity is to be recorded, keeping in mind that, for example, clause 3(2) states:

> An entitlement to maternity leave is subject to the following qualifications:

And then paragraph (b) states:

> The entitlement is reduced by any period of extended paternity leave taken by the employee's spouse.

Having regard to the fact that the expectant mother may work for one employer and the prospective father works for another employer, how is it envisaged that there will be the balancing of the maternity leave in respect of one employment and the paternity leave taken in respect of

the other so that the total period of 12 months is not extended?

The Hon. C.J. SUMNER: The facts are as set out in clause 3(5) of the schedule where there is a procedure for statutory declarations to be provided to the employers.

The Hon. K.T. GRIFFIN: So it may be that there are statutory declarations: is the Attorney then suggesting that the employers will have to consult on the basis that one employee is given the statutory declaration which states the particulars of any period of paternity leave sought or taken by a spouse and that so far as the maternity leave is concerned that requires the two employers to liaise rather than anything more formal than that?

The Hon. C.J. SUMNER: The only way that a problem can occur is if the employee makes a false declaration.

The Hon. K.T. Griffin: The employer will have to ensure that there is a statutory declaration.

The Hon. C.J. SUMNER: I also point out that paragraph *(c)* provides that other information may be prescribed by regulation. Presumably it could be prescribed to be provided by a statutory declaration. If both the applicant for paternity leave and the applicant for maternity leave have to provide a statutory declaration to the employer about what leave the other has had, that should satisfy the situation provided that the employees make truthful declarations.

The Hon. K.T. GRIFFIN: I expect that a lot of these issues will have been explored at the Industrial Commission, anyway. Briefly, for my benefit and for other members, there is provision for the transfer of a woman employee to a safe job. That is in paragraph 5 on page 25. Is that the current provision in awards relating to maternity leave? If not, can some indication be given as to where it might vary? If that is not possible now, perhaps it could be followed up. Paragraph 5 (1) provides that if, in the opinion of a legally qualified medical practitioner, illness or risks arising out of the pregnancy or hazards connected with the work assigned to the employee make it inadvisable for the employee to continue at her present work, there can be a transfer. It makes no reference to any potential danger to other workers as a result of the inability of the pregnant woman to react to emergency situations and it makes no reference to any prospective danger to the unborn child.

I have not had time to examine the Equal Opportunity Act, but I think that allows some discrimination in those circumstances, with a view to the woman not losing her job but shifting around. That is the focus that I wanted to bring to bear on this provision. If it is not possible to give the answer now, could it be provided at a later stage?

The Hon. C.J. SUMNER: We will get that information for the honourable member. However, I am advised that this comes from the Federal test case on this topic.

The Hon. J.F. STEFANI: I am aware of a case in a nursing home where a woman was pregnant. That case went before the Equal Opportunity Commission where it was deemed that the woman was not in a position to carry out her duties because they required the lifting of debilitated patients.

The Hon. C.J. SUMNER: I do not have the equal opportunity provision in front of me, but there is some let-out provision in circumstances where there is a danger to the person concerned.

Clause passed.

Remaining clauses (37 to 39) passed.

The Hon. K.T. GRIFFIN: I do not intend to proceed with new clause 40; it was consequential on an earlier amendment which I lost.

Schedule and title passed.

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

That this Bill be now read a third time.

The Hon. K.T. GRIFFIN: I am conscious that the Bill, from the Liberal party's point of view, is now a better Bill than when it went into the Committee. There have been some significant changes to it. There are, though, still areas of major concern and, whilst I do not intend to divide at this third reading, I want to indicate that we have considerable concerns about the Bill and do not intend to support the third reading.

Bill read a third time.

THE FLINDERS UNIVERSITY OF SOUTH AUSTRALIA (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 November. Page 1049.)

The Hon. R.I. LUCAS (Leader of the Opposition): In addressing the second reading of this Bill, on behalf of my colleagues in another place I want to place on the record certain comments. The Hon. Jennifer Cashmore, the member for Coles, said that, because of some problems in relation to the scheduling of the Flinders University debate in another place, she was unable to put to the Chamber the comments and views of constituents to whom she had spoken over a number of months.

Subsequently, during the grievance debate she has spoken briefly on the issue but, nevertheless, does want to have expressed in this Chamber her concerns about some aspects of the Bill. Whilst the Liberal party has decided to support the legislation before the Parliament, there are a number of members in both places who have some concerns about aspects of the Bill.

The member for Coles is one. One or two members in another place wanted to speak on the Bill and similarly spoke with me, between the passage of the Bill from another place to this place, with various suggestions about what might be done to this piece of legislation. The undertaking that I gave them was that I will seek in part, but not completely, to put on the record some of the concerns they have about the legislation.

I certainly agreed with some of them and with others perhaps I am not quite so sure, but nevertheless I intend to place those views on the public record so that, as I said, whilst the Liberal party has decided to support the legislation, those concerned with this debate at Flinders University ought to be well aware that some members in the Liberal party did feel strongly about this issue and did want to have their views recorded one way or another.

I must say that my preferred option for the resolution of this conflict at Flinders University would have been

for the institution itself to have solved its own problem. I have indicated on a number of previous occasions that I am reluctant to see the Parliament intervene in the internal affairs of the university. I expressed those views strongly when last we discussed the university Acts in this Parliament.

Of course, I concede that the Acts are Acts of the State Parliament and there are occasions on which we have to express our views and we do so, but I am reluctant to do that and, on most occasions, would prefer to see the university, if it is at all possible, resolve the dispute or the conflict by itself. On most occasions most university administrators and certainly Vice Chancellors would agree with the view that they would like to sort things out themselves rather than have the Parliament intervene in the internal operations of the university administration and management.

Certainly, that is the view that was expressed to me on more than one occasion when in a previous existence I was shadow Minister of Further Education. Without going into all the detail, I want to address some of the concerns that have been relayed to me either directly or through some of my colleagues about this dispute. As members will be aware, it is broadly in relation to a proposed restructuring of the university and the schools into faculties or divisions. I know the university maintains that the dispute is not about that but about a dispute-solving mechanism. Frankly, I do not accept that proposition. I believe that if we did not have this ongoing dispute at Flinders University we would not be confronted with the Bill before us this evening.

The Hon. Carolyn Pickles: That is not necessarily correct.

The Hon. R.I. LUCAS: The Hon. Carolyn Pickles says that is not necessarily correct. I accept that she and others have differing views. Certainly, the administration at Flinders has a different view. Nevertheless—

The Hon. Carolyn Pickles: The council has a different view.

The Hon. R.I. LUCAS: The council has a different view. Nevertheless, having listened respectfully to all those views and making a considered judgment, my view does not concur with those other views. I do not believe that we would have seen this legislation had it not been for the ongoing conflict at Flinders University over past months. I want to refer to some material that I have received from a number of academics and members of the convocation putting, again, their particular side of the argument. I accept that that is the case and that there are two sides to any dispute but, as I indicated earlier, in fairness to these people I believe that their side of the story ought to be put on the public record. I quote from a document from Ms Patricia O'Grady, a former President of the convocation, on the history of the issue. She states:

> The new statute 4.3 was rejected convincingly by convocation at a special general meeting held on 2 July 1992.

Without going through all the detail, the statute was returned to council, council did not agree and it was sent back to convocation. The quote continues:

> At another special general meeting held on 19 August 1992, the proposed 4.3 again was not approved, with a decisive majority of almost 2 to 1. A majority of almost 2 to 1 must be regarded as decisive, although some people regarded the attendance as not representative of the electorate.

There seem to be varying versions of how many graduates there are of the university. During this debate I have heard the figure of 23 500; 27 000 is another figure that has been commonly quoted; and the former President of the convocation uses a figure of 16 000 graduates. Ms O'Grady indicates that the attendance at that particular meeting was 243 members of the convocation. I know that in the debate that has ensued over the past few weeks much has been made of the fact that not many people turn up to convocation meetings, and I accept that, in the main, that is probably correct.

The inference has been that a quorum is only 20 and that generally the maximum is 80 but, in relation to this special general meeting, some 243 persons turned up to express a view in relation to the proposed restructuring at the university. Of those 243 people, a decisive majority of two to one rejected the position. I want to make some general comments about attendance at convocations. I have had some experience with the University of Adelaide and with its own convocation of electors and senate. My colleague the Hon. Diana Laidlaw made the perhaps alarming criticism that some 20 years after graduating from Flinders University she first became aware of the convocation of electors. That is an indictment on Flinders University generally.

The Hon. Carolyn Pickles: Perhaps she doesn't read the papers.

The Hon. R.I. LUCAS: Certainly, I understand that the university advertises, but the point that I believe ought to be placed on the record is the way in which the University of Adelaide goes about establishing its convocation of electors and keeping in touch with members of its convocation and senate. I do not know the number of graduates of the University of Adelaide, but I presume that it is far in excess of those of Flinders University. If the figure is 25 000 or so for Flinders, the figure in respect of Adelaide University would be significantly higher simply because the University of Adelaide has been in existence for a far longer period. What the University of Adelaide does for its graduates—

The Hon. Anne Levy: There weren't as many graduates in the old days.

The Hon. R.I. LUCAS: I accept that. The university contacts all its graduates with a request as to whether they want to go on a postal voting roll, in effect, although I am not sure of the exact term for it.

The Hon. Anne Levy: I am told that Flinders University does the same, once it has one contact with each graduate, as Adelaide does.

The Hon. R.I. LUCAS: So, there is a register at Flinders University.

The Hon. Anne Levy: One letter is sent to each graduate. If the graduate responds, they go on the register; if they do not respond, they do not.

The Hon. R.I. LUCAS: Perhaps the Hon. Ms Levy will join the debate and she can give further clarification of that detail. The system at the University of Adelaide works effectively in that members of the convocation and the senate are contacted, and those who have expressed an interest in participating, whether it be to vote on or discuss statutes, are advised on a continuing basis. Only last week I received my information from the University of Adelaide in relation to matters of interest to members

of the senate and the convocation. I voted for various elections as well.

In some of the correspondence I have received from Patricia O'Grady, reference is made to this matter of contact with graduates and of a report from a person or group called Downes Venn. In fact, Ms O'Grady states:

> In reports sought from Downes Venn I think several years ago, one of its criticisms was that the university had failed to maintain contact with its graduates.

I do not have detailed knowledge of that. I presume that Patricia O'Grady, given her position as former President of the convocation, is in a good position to be aware of that sort of detail. It is an indication—and the comments of my colleague the Hon. Diana Laidlaw add to that—that Flinders University needs to do more, in my judgment, in relation to contact with its graduates, and my colleague the Hon. Legh Davis talked about further developments in relation to *alumni*. More needs to be done in relation to contact with graduates on the convocation at Flinders University.

In relation to turning up to meetings, as someone who supports voluntary voting in local government, State and Federal elections, and does not support compulsion, I personally find it difficult to be critical if only 243 people—although that is still a reasonable number—were moved and interested enough to turn up to a particular meeting to express a view one way or another on a very important issue. Certainly in some local government elections—and the Minister of Local Government Relations is in a better position than I to know this—the turnout figure is about 5 per cent or less.

The Hon. Anne Levy interjecting:

The Hon. R.I. LUCAS: So, the Minister, in a better position than I, thinks that 8 per cent is about the lowest figure. Certainly many of the council figures I have seen in non-contentious periods would have a turnout figure somewhere between 10 per cent and 20 per cent.

The Hon. J.C. Burdett interjecting:

The Hon. R.I. LUCAS: I accept the comment from my colleague the Hon. Mr Burdett that this was a contentious period. The general philosophical point I have is that I find it difficult to be critical of the notion of voluntary attendance and participation in relation to meetings. I can be critical of the fact that perhaps many people might be unaware, because of communication breakdowns between the university and members of the convocation—and that needs to be further addressed. However, even taking that into consideration, I suspect that not a huge number of people would want to express a view one way or another on a particular issue. That is my personal view. It is a view which is consistent in relation to voluntary voting at local, State and Federal Government elections, and it is my view in relation to participation in university affairs, one way or another.

The other point I would make is that the University of Adelaide has managed for many years to have relatively harmonious relations with its convocation and its senate, and does not seem to have found itself in this sort of dilemma between the administration of the university, the council, the senate and the convocation of electors.

In a moment I will refer to a contribution from one of the members of the Convocation of Flinders University, and I want to make some further reference to the difference in the operation between Flinders University and the University of Adelaide in that particular respect. I know that recently a review has been done at the University of Adelaide concerning the operation of the Senate and Convocation of electors. That is something that they have handled within the university's administration. I think a recommendation is going to council, or perhaps it has just come out of council, about amalgamating the Senate and the Convocation of electors at the University of Adelaide; but nevertheless maintaining the position that that new body, whatever it will be called, whether the Senate or the Convocation of electors, will still retain its power in relation to possible veto over statute.

The other point I make is in relation to whether or not we have what my colleague the Hon. Legh Davis referred to as an anachronism, a convocation of electors. That is, again, in my view a decision for the universities. I can understand the view of some—and I respect their view—that the council is the duly elected body and that it should have a complete responsibility and therefore any other body like the Convocation should not therefore have the power of veto, I respect that view and it is a view that is properly held by people in this debate.

But equally, there is a view that, if a university chooses, it can have its own equivalent to the bicameral system, as we have here in South Australia. We have two Houses of Parliament and both Houses have more or less the same powers. We in the Upper House can reject or veto legislation and set it aside and, equally, of course, so can the House of Assembly. It is a decision, in the end, for the universities to take whether or not they have what I would call their own equivalent of a bicameral system or whether they want to have a unicameral system, with another body which is, in essence, an advisory committee.

In my judgment, what Flinders University is doing here is, in effect, accepting that one particular model is the appropriate way to go—that is, the decision making body is the university council and the Convocation really has no more substance than an advisory committee or an advisory body. It can recommend but, in the end, the university council can ignore the recommendations of the Convocation and make its own decision, insist on that decision and force a particular viewpoint through the Governor for final proclamation. As I said, I accept that that is a point of view that is properly held by many in this debate.

However there is the other alternative, an alternative which I do not necessarily think is an anachronism, and which the universities if they so chose should be entitled to continue with. The University of Adelaide, to my knowledge, even with the most recent review, is still maintaining the equivalent of this bicameral system, with the new body, with the power of veto. As I said, over past years it has managed to maintain good relations and get its statutes through, maybe with amendment on occasion—as occurs with the Government in this Parliament.

The Hon. L.H. Davis: There is no other tertiary system with this.

The Hon. R.I. LUCAS: My colleague says that no other university has this system. I acknowledge that. I am not arguing that there are dozens of others, Australia wide, that do have that power. But if we accept the view

that universities ought to be entitled to make those decisions and sort the decisions out for themselves—and if the University of Adelaide chooses to maintain its own equivalent of the bicameral system within that institution—then, personally, I support that proposition.

I would have preferred, as there is, according to Patricia O'Grady, a review being conducted of the convocation at Flinders University, that the university had sorted this matter out within the institution and that there be an agreed position in relation to this matter. It may well be that that might not have been possible. It might never have been possible and in the end we might well have been forced to be confronted with the legislation that we have before us this evening. That special general meeting of 19 August 1992 passed the following resolution:

> This meeting resolves that the proposed statutes be referred to the executive convocation and the Vice-Chancellor with a view to finding constructive solutions to the present problem; that is, the items in the proposed 4.3, which are unacceptable to convocation.

The other point I note from Patricia O'Grady's submission is a contention—and again I am not in a position to confirm or rebut this—under the heading 'Mounting costs of a cost neutral proposal', as follows:

> Incomplete costings indicate that the amount in 1993 could exceed $1 million, which is a large sum of money which could support between 100 to 330 students who are currently denied tertiary education.

I think it would be a simple matter for the Minister, if she is in possession of information this evening, to provide the detail as to whether or not that claim by the former president of the convocation is correct. Certainly, the viewpoint put to me earlier in relation to the restructuring was that it was in the interests of smaller government, more efficient administration and saving money. Maybe that is the case. But certainly the claim from the convocation representatives is that that is not the case, and a figure in 1993 exceeding $1 million in extra expenditure is mentioned by Patricia O'Grady.

I have also received a submission through my colleagues in another place from the Professor of Medical Biochemistry, Michael Berry, who is one of those majority of people on the convocation who were unhappy with the restructuring of the university. I will quote from just a couple of sections of his nine page submission, as follows:

> A meeting of several hundred members of convocation on 19 August 1992 rejected by a majority of about two to one a motion proposed by the Director of Administration (and Registrar) to amend university statute 4.3 in a manner that would have erased the schools of the university from the statute books. The massive size of the negative vote effectively provided a refutation that the attempt to block repeal of the statute was a last minute, indeed last-ditch attempt, by a small non-representative clique of 'academics' to thwart the will of the majority of the university community. This claim had arisen from the outcome of a meeting of convocation convened a month previously for the purpose of considering council's recommendation to revise statute 4.3...The two votes of convocation should not be taken to imply that convocation believes there is no scope for improvement to the university's administration. There must be few people associated with Flinders who do not believe that the university's operation could not be improved by administrative reorganisation. Moreover, a majority would probably agree that there are too many schools for each to be represented at the highest level by its dean.

That is an important point to make. Many of the persons who opposed the restructuring did not take the position that they wanted the status quo to remain. They acknowledged that there could be much improvement in the university's administration and, as Professor Berry says, there were too many schools for each to be represented at the highest level by their deans. The only other reference from this nine page submission that I would like to place on the record is the final comment from Professor Berry.

I am not sure whether these claims by Professor Berry will be pursued, but I think it is an indication of the intensity of the feeling of the opponents to the restructuring at the university. The letter makes reference to the recommendation to introduce legislation such as that which is before the Council, and states:

> If the Vice-Chancellor now follows this recommendation, it can be confidently predicted that members of convocation will feel sufficiently incensed to seek a Supreme Court injunction to oblige the administration to abide by the university's statutes. Such a scenario could only add to the almost irreparable damage being done by the conflict to the university, as illustrated by its steadily declining research performance over the past three years, measured by national standards. Surely what is needed is a process of stocktaking by all the involved parties and a firm commitment to negotiation rather than confrontation.

I suspect that what has been suggested there cannot be done, but it is an indication of the strength of feeling and the strength of the division that has occurred at Flinders University between the two sides. In my judgment, that is not good for the university.

The final submission that my colleague from another place asked to have put on the public record, at least in part, was from that well-known campaigner against the restructuring, Dr Reece Jennings. I will cite just two passages from the four or five pages that he provided to one of my Lower House colleagues. Dr Jennings states:

> Irrespective of what you are told, I think it is important that parliament understands that this is an extremely emotional and volatile issue which, in the past two years, has bitterly divided the university into opposing camps and has resulted in an exceptional amount of ill feeling within the various academic disciplines towards the administration. Emotions still run very high and, at the annual general meeting of the university convocation, which was held on 2 November, a motion was carried overwhelmingly, directing the executive committee of convocation to take whatever steps it could to have the university's so-called deadlock resolving proposals halted until such time as the administration of the university had worked with the executive of convocation and the university community generally to try to work out some kind of a sensible compromise. Unfortunately, a characteristic of the whole saga of this matter has been the refusal of the administration to consult or compromise...
>
> Under the circumstances, I believe that for parliament to approve a change to the Act which will take away the right of veto of convocation will further divide the university and embitter individuals already in deep conflict and not be in the best interest of Flinders. It would be far better for everyone if the Vice-Chancellor was to take the advice of many people who have his interests at heart and do something about giving the

executive committee of convocation the right to review legislative proposals and enter into sensible conciliatory discussions about them. This has applied for many years at the University of Adelaide and works splendidly. I am well aware of this fact because I am also a member of the standing committee of the senate of the University of Adelaide. The attitude of the Adelaide administration towards its senate and standing committee is totally different from the stand-off, hostility and rudeness which has characterised the relationship at Flinders.

I agree with some aspects that those people have suggested, but not all of them. I note the point in the letter from Dr Reece Jennings, who has had experience of working on the senate of the University of Adelaide and the convocation of electors at Flinders University, so he is in a better position than anyone in this Chamber from that viewpoint because he has personal experience of how the two systems operate, that the senate of the University of Adelaide has the same power as the convocation of Flinders University and it has managed to work harmoniously with its senate and standing committee to ensure the passage of its statutes, at least in one form or another.

I conclude by repeating that I wish it had been possible for this matter to be resolved within the university. It is perhaps a forlorn hope that the review that is currently being conducted into the convocation of electors at Flinders University might have come up with a model similar to the one that is being used successfully at the University of Adelaide, that is, a standing committee or, as the Flinders University might call it, the executive of the convocation, perhaps with a deadlock provision similar to the one that operates in our Parliament where conferences of managers try to resolve disputes between the two Houses or, in the case of the university, between the two bodies. In the end, as with our conferences of managers, there are a number of options—further amendment, approval or, in some cases, ultimate rejection.

The Liberal Party supports the legislation, but I express concerns about some aspects of the proposal. Now that the Bill is likely to be passed in this Chamber, I hope that the dispute at Flinders University will soon be forgotten and that the warring parties will come together for the benefit of the university and the community in general. All members in this Chamber, whether they be members of the Government or the alternative Government, would wish to see Flinders University retain a prominent position as an important tertiary institution in South Australia. That is the view I take, and I wish Flinders University, its administration, the council and the convocation well in settling down after what has been a unsettling period for the university.

The Hon. CAROLYN PICKLES. I support the Bill. First, I would like to say that I believe the Hon. Mr Lucas has gone right over the top, but that is his usual style. One would think he had never discussed this issue with his colleagues who are members of the Flinders University council. I would like to correct the Hon. Mr Lucas's critical comments regarding the role of convocation.

The Hon. Diana Laidlaw: Do you have an interest in this that you should declare?

The Hon. CAROLYN PICKLES: I will declare my interest. I am a member of the council.

The Hon. Anne Levy: Elected by this Parliament.

The Hon. CAROLYN PICKLES: Elected by this Parliament, I might say, as is the Hon. Mr Burdett, and the Hon. Mr Davis was a member of the council and still has an interest, as he stated in his contribution to this debate. The Hon. Ms Laidlaw indicated in her contribution that she had not received a letter, but I have been advised that that is not accurate—that every graduate of the university is on convocation and that, at some time, presumably—

The Hon. Diana Laidlaw: In the past 20 years.

The Hon. CAROLYN PICKLES: —in the past 20 years, at some address or other they would have received a letter. Graduates are automatically placed on convocation, and every graduate will receive a letter to advise them of this.

The Hon. Diana Laidlaw interjecting:

The Hon. CAROLYN PICKLES: I suppose if the honourable member had an interest in going to convocation, she would have followed this up. Letters used to go out to the whole of convocation, but convocation itself decided that this was too expensive, so it inserted notices in newspapers. An advertisement was inserted in the *Advertiser* and the *Australian,* and occasionally interstate newspapers are used. A notice is inserted in the university's internal newspapers. Copies of *Encounter,* the university's newspaper, go to everyone twice a year.

I find it quite peculiar that the Hon. Mr Lucas has chosen to try to portray this as some kind of undemocratic process. It is interesting that his colleagues in this Chamber who have had an association with Flinders University support this Bill, as do Liberal members in another place. I would like to place on record for the Hon. Mr Lucas's illumination that the point at issue is not how many members of convocation attended that meeting (200 or so) but who they were.

It is my information that most of the people who turned up at that meeting were staff and not graduates. The disagreement seems to have been between some members of staff and council and not between council and convocation itself. In relation to the honourable member's glowing comments about the Adelaide University system, I understand that that university itself is not entirely happy with this and would like to change it.

The Hon. R.I. Lucas: Who said that?

The Hon. CAROLYN PICKLES: I have a lot of associations as you know, personal and otherwise.

The Hon. R.I. Lucas: Who said it?

The Hon. CAROLYN PICKLES: I don't have to divulge my information to you, just as you don't have to divulge yours to me.

The Hon. R.I. Lucas: A lot of that sort of thing has been put around but no-one is prepared to say who at the University of Adelaide is saying it.

The Hon. CAROLYN PICKLES: Perhaps you could go and ask them yourself. Regarding the honourable member's comments about having two houses with the same kind of powers to deal with these issues, I believe that this would make universities even more inefficient than they are accused of being now. As a member of the Flinders University council, I am surprised at the honourable member's comments which imply that some

kind of war had been going on at Flinders University. I have not been aware of it.

There certainly has been some strong disagreement, but this matter has been discussed for some 18 months now. I have sat through many council meetings with a great degree of patience while this matter has been worked through to, I understood, almost the satisfaction of most members of the university.

The final special council meeting that was held to support this legislation going ahead was called I think on a Friday. Unfortunately I turned up 15 minutes late and the meeting was over, which is a bit of a record for Flinders University council meetings. I must say that that indicates the very strong support there was for this going ahead.

I would now like to turn to some aspects of the Bill, albeit very briefly. Clause 8 of the Bill, which addresses the problems of a deadlock between council and convocation, will be welcomed by the council and the university generally. The Act currently provides that convocation has the power of veto in relation to any statute or regulation made by the council. My belief is that there should be a mechanism to break this deadlock, and this Bill will provide that mechanism.

There has been a difficulty with respect to this deadlock at the university, and I believe that a most unsatisfactory situation has emerged but not—and I stress 'not'—a kind of war that the Hon. Mr Lucas would imply has somehow ground the university to a halt. I think that is a very insulting comment to make about the role of the Flinders University in this State: it is a very fine university with a very fine record internationally.

Clause 8 removes the convocation's current powers of veto in relation to statutes and regulations that are made by the university's council. The new provisions provide for a negotiation process between council and convocation over a disputed statute or regulation. Here again I stress that it provides for a negotiation process which I should have thought would be a satisfactory resolution.

If agreement is not reached within the stated time limit the council may proceed to have the statute or regulation promulgated. We are talking here about civilised, educated people in one of the finest institutions in South Australia. We are not talking about parliament where a deadlock is reached almost daily and when we have to go to conference usually there is no resolution; we are talking about intelligent people who have no political axe to grind and who can usually, by long discussion I admit, manage to sort out their differences of opinion. That has been my experience while at Flinders University: that there have been quite strong differences of opinion which have been expressed openly, and on every occasion I can say there has been a resolution, a working through and give and take on both sides. In this case I believe that this method will provide that kind of mechanism for this goodwill to continue.

The Hon. M.J. ELLIOTT: I rise to support the Bill, and I begin by saying that I find it difficult to believe that the convocation as now constituted could be presented as a democratic body. The reality is that it has a very low participation rate when one counts the number of people who are entitled to participate. Also, as the Hon. Ms Laidlaw has already said in this place, there are a large number of people who are probably entitled to be involved but who are not even aware of that possibility.

As a graduate of the University of Adelaide, I was not aware that I was entitled to be involved in the elections of the senate. Having graduated, one leaves the place; they quickly do not have one's address; and one does not become aware that these things exist. It is only when legislation comes before parliament that a member of parliament is sometimes made aware—

The Hon. L.H. Davis: You are more likely to have contact with the alumni; that is the development that is occurring.

The Hon. M.J. ELLIOTT: That is right. Even then I stumbled on them by accident.

The Hon. Diana Laidlaw interjecting:

The Hon. M.J. ELLIOTT: That also is true. Because this body has a low participation rate, interest groups are capable easily of getting the numbers when they need to. They would argue that they are just exercising their democratic right but I would—

The Hon. R.R. Roberts interjecting:

The Hon. M.J. ELLIOTT: Yes. I do not believe that in the true sense of the word it is really democratic. The fact is that numbers can very readily be manipulated. By comparison, the council of Flinders University is a representative body with the bulk of those people being elected by various interest groups. We have the general secretary, the students' association and five members of parliament, who have been elected from parliament which is elected by the people of South Australia. We have eight members elected by the academic staff, and one person elected by the general staff. Four persons are elected by the convocation; one post-graduate student is elected by post-graduate students; and three under-graduate students are elected by under-graduate students.

So, a vast majority of councillors are elected, and that council is not capable of being stacked by a particular interest group that gets itself mobilised at any particular time. As such, I would argue that the council is a far more democratic representative body than a convocation could hope to be. That is not a criticism of convocation or perhaps indeed a role that it can play, but to suggest that it is a democratic body in comparison to the council I do not think is really accurate.

It is not correct to suggest that it can act in the same way as the Upper House of State parliament, which is elected on a proportional representation basis by every adult Australian resident within the State, because there is no comparison. Every adult resident is expected to participate in that vote. I do not accept that the convocation is democratic in the sense that most people would understand democracy, and I do not think it should be in a position to frustrate the proceedings of council.

There is not much point in my addressing the rest of the Bill because I have no particular problems with it. The Democrats express their support.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): In closing the debate, I would like to thank all members for their contributions. I appreciate the comments that members have made and am certainly glad to see there is support for this measure. The Hon.

Mr Lucas spoke a great deal about 243 people having turned up and tried to draw analogies between that and low turn-outs in local government elections. While local government elections do vary in turn-out from 8 or 10 up to 95 per cent, the surprisingly high convocation attendance of 200-odd, I would point out, is less than 1 per cent of convocation. It is far worse than the very worst of local government turn-outs recorded in recent times in this State. I understand that far more usual is the 25 to 30 people attending convocation which, instead of being 1 per cent, is more like .1 per cent of the total eligible members.

The Hon. Mr Lucas quoted extensively from Reece Jennings as a member of council. Because his name has been mentioned in this place by the Hon. Mr Lucas, I can perhaps indicate to him and to the Council that the changes in this Bill when before the Flinders University council were voted for by Reece Jennings, and in July this year he recommended to convocation that the changes be accepted. He has now changed his mind quite obviously, but perhaps these facts do need to be drawn to the attention of the Council in view of the fact that he is being quoted as an authority in one direction whereas only a few months ago he was a fervent authority in the other.

However, the important point to recognise is that this legislation has been requested by Flinders University. There is no question whatsoever of the Government or this Parliament imposing these changes on Flinders University. It is a change which is requested by the body which has the responsibility for running Flinders University. There is no other body which has this responsibility, and it is this responsible body which has requested these changes to its legislation. This Government and this Parliament are acceding to the request from Flinders University, and I recommend the Bill to the Parliament.

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

CLASSIFICATION OF PUBLICATIONS (DISPLAY OF INDECENT MATTER) AMENDMENT BILL

In Committee.

Clauses 1 and 2 passed.

New clause 2a—'Classification of publications.'

The Hon. M.J. ELLIOTT: I move:

Page 1, after line 15—Insert new clause as follows:

2a. Section 13 of the principal Act is amended by inserting after paragraph (e) of the definition of 'prescribed matters' in subsection (3a) the following paragraph:

(ea) demeaning images

When I expressed my support for this legislation, support that was qualified in some ways, I made the point that a major concern I had was the issue of demeaning images. As I see it, one of the actions that really stirred up the debate in the community followed the publication of *People* magazine, the cover of which was offensive to a large number of people.

The reason for this amendment is that the question of demeaning images is not covered in section 13 of the principal Act under 'prescribed matters'. If one looks at what the definition of prescribed matters includes, I do not believe that any of those adequately pick up the concept of demeaning images. As an example, if we consider the photograph which was on the cover of *People* magazine and also on its posters, we can see that the only description that even comes close to demeaning images is '(a) matters of sex', and yet any examination of that particular photograph shows that the pose exposes no part of the woman's anatomy that perhaps would be picked up by this definition of 'matters of sex'. The important thing was the pose in which the woman was placed, and it was quite clearly a demeaning pose. For that reason I feel that the current definition of 'prescribed matters' is inadequate to pick up what I think is a matter of concern, and so I have moved this amendment.

The Hon. BERNICE PFITZNER: I welcome the amendment, because when I was drafting the Bill I raised this same query about demeaning images being encompassed in what is termed 'prescribed matters', and I was directed by Parliamentary Counsel that it would be covered under 'sexual matters', but on further discussion and after further thought I did believe that one should add the phrase 'demeaning images or poses', because not only does it relate to sexual matters but to other matters as well. So I am pleased to support the amendment and put that beyond doubt.

The Hon. M.J. ELLIOTT: One thing I meant to raise before is that the question of demeaning images has been picked up recently and inserted in the relevant Federal Act and the Federal Censor works with that terminology, and that is what he will use in future if ever an incident such as the cover of *People* magazine occurs again. So it is a concept that has already been taken into the Federal law and it is picked up in some parts of our Act incidentally because of that. But since the Hon. Ms Pfitzner has used the term 'prescribed matters' in relation to certain determinations, it is for that reason that I thought 'demeaning images' should be included under that category as well.

The Hon. C.J. SUMNER: I oppose this amendment. I think we are in grave danger in this area of censorship of just reacting to particular pressures and not thinking enough about the overall concepts which we as a Parliament should be looking at. While the Hon. Dr Pfitzner's Bill is a bad enough example of that, I think the Hon. Mr Elliott's example is even worse, because what we are returning to with this sort of proposition that the Hon. Mr Elliott is moving has the potential for the sort of censorship which we saw 20, 30 or 40 years ago.

The concept of making prescribed matters to include demeaning images is far too wide and it really expands the net of potential censorship in this State beyond what I think anyone would consider to be reasonable. I am staggered that the media in this State get extraordinarily upset about privacy Bills that are introduced, yet they ignore Bills such as this which have the potential to be very serious attacks on freedom of speech, as does this amendment of the Hon. Mr Elliott, particularly. One has only to look at the meaning of the word 'demean' to understand what I am saying.

In the concise Oxford dictionary, the edition from the table, two meanings are given, and I will refer to the relevant one, which is, 'to lower the dignity of, to condescend to do'. Another dictionary defines 'demean'

as 'to lower in status, reputation or dignity'. The Hon. Mr Elliott is proposing that a piece of literature, a magazine or an image that is demeaning in the sense that it lowers someone in status or that it lowers the reputation or dignity of someone should be a classified publication.

The Classification of Publications Board has to decide before it determines to classify that a publication describes, depicts, expresses or otherwise deals with prescribed matters in a manner that is likely to cause offence to reasonable adult persons, so there is a reasonable person test in it. However, prescribed matters are set out to be matters of sex, violence, cruelty, instruction in crime, etc. The Hon. Mr Elliott wants to add demeaning images to the list of prescribed matters. If a publication has images which tend to lower the status, reputation or dignity of certain classes of individuals and the board decides that they might cause offence to reasonable adult persons, there is a case for censorship or for classification of the publication, either as a category 1 or a category 2 publication.

What does that mean, and I ask members to reflect seriously on it? What does it mean for a good bit of satire that has been written over the years? What does it say about political cartooning in the newspapers or in the current affairs magazines in this country? They are often specifically designed to lower the status or dignity of politicians. In fact, from time to time one sees editorials in the daily press about how it is necessary to puncture the dignity of politicians, how it is necessary to tip them off their status perches, because we as politicians, so the argument goes, need to know that we cannot be pompous and full of our own dignity. So, political cartoonists daily depict politicians in demeaning circumstances. Members have only to go back over the State Bank report or anything that they may have been involved in the public arena—

The Hon. M.J. Elliott: You are clearly over the top.

The Hon. C.J. SUMNER: I am not over the top. I am making a serious point about the creeping censorship that is occurring because we are not looking at this issue as a matter of the broad principle of freedom of speech. We are now looking at it in response to particular pressures that the community is imposing on us without looking at the principle, and this is a prime example of it. I would be interested to know what is the media's attitude to it because they condemn me for apparently attacking free speech with respect to privacy Bills, yet the Hon. Mr Elliott has introduced a concept into censorship laws which, in the wrong hands, has the potential to attack a whole range of satire and send-up in our literature and a whole range of political cartooning. You are not confining demeaning images to sex; you are talking about demeaning images at large. 'Demean', I remind the honourable member, is 'to lower the dignity of or to lower in status or reputation'.

I saw on the television tonight, I think on *A Current Affair*, a small segment about the royal family. You may or may not be a royalist, but there was a debate about the purported decline of the royal family in Great Britain and the difficulties in which they found themselves. That program showed various nude cartoons of members of the royal family in what you would almost certainly say were demeaning poses.

If a magazine of that kind was put out, that is, satirising the problems that the royal family have, do you think that that should be censored? It would almost certainly cause offence to a large number of people in the community: perhaps it would cause offence to the reasonable person in the community. But should it be censored? No, it should not be.

That is the whole debate about censorship. In a free and democratic society you do not censor things just because they are offensive: you do not censor free speech just because it is offensive. You do not censor things just because they are offensive and demeaning. That, I think, is a track that we really should resist going down, but that is the very track that the Hon. Mr Elliott is going down with this amendment. He may not think he his and he may object to this argument that I am putting. However, the fact of the matter is that that is what he his doing by including this totally unqualified notion that you can censor demeaning images if they are offensive to reasonable adult persons in the community.

I gave the example of the royal family. What about Larry Pickering? Have you seen the cartoons of Larry Pickering from time to time? Have you seen the cartoon of the Prime Minister, Mr Keating, in nude pose with his genitalia depicted as Mr Pickering considers it should be depicted? Have you seen the cartoons of other prominent figures? They are undoubtedly demeaning images. They are designed, probably, to lower the status of these politicians in a jocular sort of way, and undoubtedly they could be considered to be offensive to reasonable adult persons.

Certainly the examples I gave relating to the royal family and the ones I saw on television tonight could be considered to be demeaning by reasonable adult persons. If you had a collection of these things in a book you would have the potential for that book to be censored by having it categorised as a category 1 or 2 classification.

There are a lot of other images that one could think of as being demeaning. I have referred to cartoons and caricatures. One might even say that certain reports that are produced from time to time are demeaning of the individuals referred to in them. What about Max Gilles' satire of Bob Hawke? That lowers his status; that attacks his dignity. What about John Clarke's send-ups of Paul Keating? I cannot recall any particularly profound work of political satire in Australia recently, probably because there has not been any, but if you had a book which was a satire of Australian politics or which sent up politicians or other prominent people that might be considered to be demeaning to those people.

If you have this unqualified categorisation in the censorship legislation I think you are engaging in a creeping censorship without analysing the principles about which we should be concerned.

The honourable member has mentioned the Commonwealth guidelines—and I mentioned them in my second reading speech—and it is true that the Commonwealth had introduced a concept of demeaning in its guidelines for the classification of publications. It states:

> Anything that is demeaning may be restricted or refused.

But they are only guidelines set out by the Commonwealth censor, they are not enshrined in legislation. I take the view that 'demeaning' is not an

appropriate word to use in that context, and that was the view that South Australia put when it was agreed that this word should be included in the guidelines at the Commonwealth level. It is quite clear that 'demean' is the wrong word to use. I was not at the meeting, but on my behalf it was put to the other Ministers at the Commonwealth-State Ministers of Censorship meeting that 'demean' was inappropriate that it was too broad a word. If you look at the definition it is quite clear that it is too broad.

The Hon. M.J. Elliott: What would you say?

The Hon. C.J. SUMNER: I don't know. There are other words that should be looked at: perhaps 'degraded' or 'denigrated', although even 'denigrated' I do not think is appropriate because a whole bunch of literature is about denigrating people, about satirising people and sending up people. So, I do not think 'denigrate' is an appropriate word, anyhow.

The Commonwealth and State Ministers decided to run with 'demeaning' because they could not think of anything better. They wanted to act on the immediate community pressure to deal with these magazines so they put in 'demeaning' to see how it went. In my view (and this was put by the South Australian representative at this Commonwealth-State Ministers meeting), 'demean' is clearly the wrong word: it is far too broad.

Further, if you are talking about demeaning sexual images, they are already picked up. You do not need what the Hon. Mr Elliott is trying to put in because the prescribed matters already mean matters of sex. So, if you have matters of sex which would cause offence to reasonable adult persons, you already have established the criteria to classify those publications.

In fact, the magazines *Picture* and *Post* in South Australia were classified category 2 by the South Australian Classification of Publications Board. So, they did not need to have specific additional criteria of demeaning images in order to be classified; they used their existing criteria—matters of sex—and they put out guidelines for banner posters advertising magazines in which they said that banner posters for unrestricted or category 1 magazines which contain demeaning sexual images or poses will be classified as category 2.

Where matters of sex were involved, they were able to say that matters of sex which are demeaning can be classified as category 2. They did that under the existing guidelines; they did not have to put in this very general word unrelated to anything or unqualified in anyway in order to deal with the *Picture* and *Post* magazines. They dealt with them, they classified them as category 2 and for some weeks they went into the restricted publication area and could not be sold in general stores. So, the South Australian Classification Board was able to act on matters of sex without having a specific clause dealing with demeaning images.

It is becoming a bit unfashionable these days to worry about censorship; it is an issue of the 60s and 70s and people do not really care now about issues such as this. So, you are a bit old-fashioned if you come along and say, 'Really, if you are talking about censorship you need to get back to basic first principles; you need to stop this business of just reacting to every particular community pressure because, if you do that, you end up back where we were 20 or 30 years ago.'

This is a prime example. No doubt very well motivated as the Hon. Mr Elliott is to try to do something about the situation, he has fallen into a trap of expanding the potential for censorship by the use of completely unqualified words 'demeaning images'. And he has the potential to attack the sort of literary freedom and satirical literature and cartoon literature that I have mentioned because all you have to establish if it is demeaning is that it lowers someone's status and attacks their dignity.

For that reason this should be removed from the Bill. If you are talking about sexually demeaning things that is covered, anyhow; you do not need a general clause of this kind.

The Hon. M.J. ELLIOTT: The Attorney has proved what an education in the law does for you: you get the indefensible and you defend it. He has exaggerated the argument rather grossly because it is quite plain that under the legislation it is what a reasonable adult—excuse me—

The Hon. C.J. Sumner: That is exactly my point. Censorship is not about what reasonable adults think. If you did that you would never have anything.

The Hon. M.J. ELLIOTT: Under section 13(3)(b) of the principal Act, where the term 'prescribed matters' is used, it provides:

> ...so offend against the standards of morality, decency and propriety generally accepted by reasonable adult persons.

Any suggestion that political cartoons or anything else will be caught up and offend the standards of morality, decency and propriety accepted by reasonable adult persons is a lunatic suggestion, anyway.

There is a way of clarifying matters further. I have just had a word with the Clerk of the House, and it can be handled within the principal Act. In section 13(3a)(a), which relates to 'prescribed matters', matters of sex are referred to. If we include at that point 'including demeaning images', it makes plain at that stage that demeaning images relate particularly to images which relate to matters of sex. I do not accept that 'matters of sex' in itself will necessarily be interpreted to pick up demeaning images. As I said, the demeaning image on the cover of *People* was not a picture that in any conventional sense of the word would have been taken to be a pornographic type photograph; it clearly was not.

The Hon. C.J. Sumner: That was classified by our Classification of Publications Board using the criteria in this Act, and it was made category 2.

The Hon. M.J. ELLIOTT: The point I am making is that the question of demeaning images is a separate one in many ways from questions of pornography itself, which are the sorts of things that many people think about when they think about matters of sex. What was offensive about the *People* poster and is offensive about other things which have been complained about is not the fact that there may be bare breasts or whatever (in fact, in *People* magazine there were not any): it was the fact that a woman was being demeaned quite severely by that photograph. It happened to relate to her sex and that is why it was particularly offensive to some people. It was offensive not because—

The Hon. Diana Laidlaw: To reasonable people.

The Hon. M.J. ELLIOTT: Yes, to reasonable people. In fact, that has missed the attention of the Attorney.

The Hon. C.J. Sumner: What has missed the attention of the Attorney?

The Hon. M.J. ELLIOTT: What may have missed your attention is what has actually caused the offence to many people. As a matter of course I am not a person looking for large levels of censorship, and I have not suggested at any stage that publications of magazines should be stopped, although there are particular matters such as violent pornography or child pornography that clearly I would ban. You talk about censorship which we do not want, yet the Attorney himself, I am sure, would support censorship at that level.

The fact is that we are in our society, at the end of the day, drawing lines and saying that some things are acceptable and some are not. 'Anything goes' is not on. I will always be very cautious of censorship, and I consider myself, generally speaking, to be very libertarian. I do not find nudity offensive; I do not find nude beaches offensive; but I do find demeaning images offensive. I do not believe that this Act adequately copes with it. What is being asked for is not unreasonable. I am not setting off on a major campaign of censorship, and I have made that quite plain on several occasions as I have spoken.

In response to the Attorney's objections, I said that I thought he had gone over the top. However, to clarify matters I seek leave to withdraw my amendment and move a new one in its place.

Leave granted.

The Hon. M.J. ELLIOTT: I move:

Section 13 of the principal Act is amended by inserting after 'sex' in paragraph (a) of the definition of 'prescribed matters' in subsection (3a) 'including demeaning images'.

So, immediately following matters of sex are the words 'including demeaning images'. Quite clearly at this point the term 'demeaning images' does relate to that, so that covers the Attorney's concern about political satire, which I do not believe would have been picked up, anyway. I now believe that 'demeaning images' has been very clearly directed.

The Hon. C.J. SUMNER: It is quite clear under the original amendment that more than demeaning images relating to sex would have been picked up, because the Hon. Mr Elliott moved as a discrete and separate criterion under 'prescribed matters' demeaning images, without any qualification whatsoever. So, it obviously had in its plain, ordinary meaning a broad scope dealing with the lowering of status or the lowering of a person's dignity, and it was not related to sex at all.

So, the fears that I expressed were not unfounded; they were certainly not over the top. I accept that there is censorship; that is why we have this Classifications of Publications Act in place. I accept that there are lines that have to be drawn, and I also accept that those lines shift, depending on community attitudes, to some extent. I can also say that I have campaigned against child pornography. Very early in the piece at national meetings of Ministers for censorship—before it became fashionable for people such as the Prime Minister—I took a strong stand against violent videos—10 years ago as it almost is now. At that stage, the prevailing views about censorship were such that people thought that, raising these matters, particularly relating to violence on videos, was a bit old fashioned, but I did raise those issues.

So, I am very sensitive to the fact that you do draw some lines with censorship. I certainly thought that, for instance, the video nasties were way over the top, absolutely revolting and should have been banned, as indeed they were eventually, and that the criteria for violence in videos should be tightened up. It was to some extent, although in my view not all that effectively given that films such as *Silence of the Lambs* ended up with an M category which, to my way of thinking, was totally inappropriate, and I said so at meetings.

While lines have to be drawn, what the Hon. Mr Elliott was attempting to do was to draw that line far too much in favour of the possibility of increasing censorship. The prescribed matters are important, because they do set out the sorts of things that the Classifications of Publications Board looks at in deciding whether offence to reasonable adult persons is being caused. It is very important to realise that the censorship regime is not about classifying or censoring anything just because it causes offence to reasonable adult persons. If that was your criteria for censorship, then you really do have a very repressive regime.

The Hon. M.J. Elliott interjecting:

The Hon. C.J. SUMNER: That is the fact of the matter; that is the basic criteria in section 13. There is no way that the Classifications of Publications Board is mandated to censor anything that gives offence to reasonable adult persons. If you did that, you would be attacking a lot of theatrical productions, literature and cartoons, because a lot of art, for instance, is supposed to shock and cause offence. It sometimes has as its rationale causing offence to shock people—

The Hon. M.J. Elliott interjecting:

The Hon. C.J. SUMNER: Well, no, just a minute.

The Hon. Diana Laidlaw: But it can.

The Hon. C.J. SUMNER: And it can demean, that's right.

The Hon. M.J. Elliott: Nudity itself is not demeaning.

The Hon. C.J. SUMNER: Yes, okay. If it demeans people, that is, lowers their status or their dignity and is offensive to reasonable adult persons, that does not establish a case for censorship: in fact, quite to the contrary. As I said before, it was a very dangerous—although probably well meant—attempt to increase the powers of censorship.

So it is that basic criteria that you have to start with. Not everything that is offensive to reasonable adult persons would be attracted by censorship; you then have to look at prescribed matters, so the board would have to look at matters of sex, violence or cruelty; the manufacture, acquisition supply or use of instruments of violence or cruelty; the manufacture, acquisition, supply, administration or use of drugs; instruction in crime; revolting or abhorrent phenomena. So, the Classifications of Publications Board has to look at those matters and then decide whether there is material covered by those matters, including matters of sex, which is likely to cause offence to reasonable adult persons, before you trigger the jurisdiction of the Classifications of Publications Board. To slip in, as the Hon. Mr Elliott was going to, as one of those things—

The Hon. M.J. Elliott interjecting:

The Hon. C.J. SUMNER: Just a minute—in the category of sex, violence or cruelty, the manufacture of

instruments of violence or cruelty, manufacture acquisition, and so on, of drugs, instruction in crime, revolting or abhorrent phenomena—to slip into that demeaning image really is making one hell of a big step in favour of increased censorship. So, I reject it, and I reject the Hon. Mr Elliott's defence that I have gone over the top in that explanation. *Lady Chatterley's Lover* in the early 1960s might well have been considered to be offensive—

The Hon. M.J. Elliott interjecting:

The Hon. C.J. SUMNER: Just a minute—to reasonable adult persons at the time. But should it have been banned? Should it have been classified? Clearly not. That is why it is very dangerous to put in these words. The Hon. Mr Elliott, in a rush of good sense, has decided that he will attach the demeaning images to matters of sex. Again, I think 'demeaning' is the wrong word. It is far too broad a concept in the censorship debate. Maybe there is a better word, 'degrading' was one I mentioned. The main argument I would now use is that it is not necessary. It is dangerous to put it there. It is not necessary because the South Australian Classifications of Publications Board clearly decided that it could deal with demeaning sexual images or poses under its current criteria as matters of sex and, therefore, what the Hon. Mr Elliott is suggesting is not necessary, and it is a wrong concept to introduce the notion of 'demeaning' into these criteria.

It is a concept that has been introduced into the guidelines at the national level, but that is not legislation. The Commonwealth censor can change those by the stroke of a pen tomorrow—and probably would do so if State and Federal Ministers made representations to that effect. I was not convinced that 'demeaning' was the right word to use nationally in this context, but it is even more dangerous to put it into legislation as we would be doing if the Hon. Mr Elliott's amendment is accepted—even in this modified form, which I accept is much better than the earlier one that he moved. Nevertheless, I do not think it is necessary, and I would prefer to see how it works out federally and I would hope that ultimately we could get to a word that did not have such a broad scope as 'demeaning'.

The Hon. BERNICE PFITZNER: 'Demeaning' ought to be included. All these terms are very subjective; for example, we have in the Summary Offences Act 1953 'immoral'. Perhaps we could argue that what was immoral in 1953 might not be immoral now. These are all very subjective words, and we must use our commonsense. This State's Classifications of Publications Board must follow the prescribed matters, but it also has guidelines as follows: first, gratuitous, relished or explicit depictions of violence; secondly, offensive language; thirdly, pictorial depiction of sexual acts; and, fourthly, demeaning sexual images or poses. So, our own South Australian board is using that term 'demeaning sexual images or poses'. I grant you that it is linked with sexual images and that does tend to limit its interpretation.

It further passed, only in October, what category 1 includes. It includes depictions of male fetishes such as rubberwear and stylish domination; illustrations and paintings which are considered not to be *bona fide* erotic artworks, but which depict explicit sexual activity or nudity; and photographs of realistic and explicit violence, provided they are not unduly offensive. What is 'unduly offensive'? Written material should not include details of gratuitous acts of cruelty, and so on.

So, although our own South Australian board follows the prescribed matters, as the Attorney states, it has its own detailed guidelines. Although I take it that having demeaning images and poses alone might be too wide, possibly the amendment of the amendment is acceptable in that it is linked with sexual images and that our own Classification of Publications Board also uses demeaning sexual images and poses.

The Committee divided on the amendment:

Ayes (12)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, M.J. Elliott (teller), I. Gilfillan, I.T. Griffin, J.C. Irwin, Diana Laidlaw, R.I. Lucas, Bernice Pfitzner, R.J. Ritson, J.F. Stefani.

Noes (9)—The Hons T. Crothers, M.S. Feleppa, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, Barbara Wiese.

Majority of 3 for the Ayes .

Amendment thus carried.

Clause 3—'Conditions applying to restricted publications.'

The Hon. C.J. SUMNER: My concern, which I expressed during the second reading debate, is that I do not think there has been any worthwhile consultation about this Bill with anyone who will be affected by it. If the many hundreds of small businesses that sell magazines that are classified category 1 woke up tomorrow and found that this Bill had passed, the publishers, first, in South Australia—as I understand it, the only State in Australia—would have to put these magazines in brown paper bags and the small businesses that sold them would need to construct so-called blinder racks.

The Hon. Diana Laidlaw: They might decide not to sell them.

The Hon. C.J. SUMNER: They might decide not to sell them and lose money, that's right. And they have to construct a blinder rack. Anyone who wanted to sell these magazines in South Australia would have to outlay at least something to revamp their premises in order to sell the magazines if this Bill were passed with the additional restrictions on them. I do not think that the people who sell these things and the people who publish them are aware of it. In fact, I am dead sure that they are not aware of it. What I want to know from the Hon. Dr Pfitzner is: has she conducted any consultation with publishers of these magazines? Secondly, has she conducted any consultations whatsoever with the people who sell them?

The Hon. BERNICE PFITZNER: As I mentioned during the second reading debate, I rang a peak body to which I had been directed, the South Australian Small Businesses and, as I said, a gentleman responded by saying that it is the publishers' responsibility. No doubt, part of it is in the packaging. They would just change the transparent packages for obscure packages. We now talk about the racks. All the publications are already in the racks, and there would be very little adjustment to them. I also draw the Attorney-General's attention to our own Classification of Publications Board, a letter from the Chairperson of which states:

As you may be aware, the board has recommended to the Attorney-General the enactment of the legislation to restrict the display of category 1 to blinder racks.

So, the board seems to be supportive of the idea of blinder racks. I did not ring individual delis, newsagents or service stations, just as when we were debating local government I was told that it was enough to ring the LGA and not necessary to ring all the local councils. Which delis should I ring? Should I ring in Elizabeth, in the south or in the west? How many should I ring for a significant statistical analysis? How many newsagents and service stations should I ring? I thought, therefore, that ringing the peak body that represents small businesses should be sufficient. It would also be a disincentive for those who did not want to outlay extra money to put in these special racks.

The Hon. M.J. ELLIOTT: I went around to, say, 10 newsagents in the city, and eight of those had magazines in racks and all one could see was the name of the magazine at the top. As such, then, they would already comply totally with the requirements under paragraph (b) in clause 3. They would face no expense whatsoever, and that is largely because of the spacing that their racks have, or the height of the retaining sections within which the magazines are contained. There was only one of them where one could significantly see the covers, and, in relation to the sort of cost that that person would face, the reality is that we are only talking about a handful of magazines, not every rack in the place. It involves only one small section of the racks. We are not talking about a huge expense for anyone who has racks of the wrong construction, and for the great majority the rack structures are suitable. For most people, I cannot see them being affected at all, and for those who would be it would be minimal in terms of cost.

The more important provision is in paragraph (c) which talks about the way prescribed matter can be advertised. It is the posters themselves that have caused the greatest concern, not the covers. As I have said in recent times, the poster display in the railway station has toned down, but that is what you see and you get assaulted by that, and there are a number of comers around Adelaide where one gets assaulted by the same thing. Under paragraph (c) in clause 3, what would happen is that those types of posters would not exist any longer. It does not stop publications being produced or people buying them, but just that they will not be all over the railway station and on comers and other places around Adelaide, or South Australia. This is not a major impost on business, and anyone who suggests that really does not have a grasp on reality.

The Hon. C.J. SUMNER: There may or may not be a cost on business—we do not know. The publishers of these magazines have not been advised of this Bill by the Hon. Dr Pfitzner, as I understand it. She has made one telephone call to the Small Business Association and that's it. Fair enough—what will happen is that as the Bill gets closer to being passed, assuming that there is a chance of it being passed, those people who are affected by it will storm in and complain about it. That is what I predict will happen. I will be sending them to the Hon. Dr Pfitzner; they will not be bothering me, I can assure you. The fact is that whatever you say about it, whether it will be an additional cost to business or not is not the point, the matter should have been taken up with the national publishers and with the local distributors—

The Hon. Diana Laidlaw interjecting:

The Hon. C.J. SUMNER: I am saying it may or may not be a cost on business. Members opposite come in here day in and day out complaining about lack of consultation, and all I am saying is that in this case, and it is quite patent from what the Hon. Dr Pfitzner has said, this matter has not been discussed with the national distributors. Maybe that is fair—Kerry Packer and co., who cares? He can afford it I suppose. The Hon. Mr Burdett says that that does not matter—well, that's fine.

The Hon. J.C. Burdett interjecting:

The Hon. C.J. SUMNER: I understand what the Hon. Mr Burdett is saying—it does not matter. Well, that is fine—it may or it may not.

Members interjecting:

The CHAIRMAN: Order! The honourable Attorney.

The Hon. C.J. SUMNER: All I predict is that, if there is a serious threat that the Bill will be passed, you can bet your life there will be people who will come in and want to make representations about it. People do not bother about it because they know it is a private member's Bill, they know it has little chance of being passed, but if there is a threat that it will be passed you can bet your life—and I will send them to the honourable member—that people will complain about it. The other point that I want to raise, and this was raised by the Hon. Mr Elliott, is that I do not know how the condition that is outlined in proposed paragraph (c) of section 14a of the principal Act applies:

...a condition that the publication must not be advertised in a manner that depicts any prescribed matter...

So what the honourable member is saying is that there cannot be advertising of any prescribed matter. That means that there cannot be the advertising of anything that deals with matters of sex.

The Hon. M.J. Elliott: Not in a manner that depicts.

The Hon. C.J. SUMNER: Just a minute; you had better have a look at it. Obviously it has not been thought out. It is saying that a condition can be imposed that publication must not be advertised in a manner that depicts any prescribed matter. 'Prescribed matter' includes those things that I read out before, but it also includes matters of sex. So what you are saying is that you can prohibit anything that deals with matters of sex from being advertised. As I say, that is one implication from the Bill. But no-one seems to be bothered about it and people seem to want to go home and so I will leave it at that.

The Hon. BERNICE PFITZNER: When the Attorney-General first raised this matter about whether I had consultation he mentioned small business and I was addressing small business. He did not mention publishers.

The Hon. C.J. Sumner: So what?

The Hon. BERNICE PFITZNER: Well, I wrote to 10 publishers. I did not address the matter of whether I had consulted them because the question was not asked. I now tell the Attorney that I did consult, and in fact more intensively, with the publishers, because there is no peak body that represents the publishers.

The Hon. C.J. Sumner: You could have told us before.

The Hon. BERNICE PFITZNER: You did not ask me; you asked about small business.

Members interjecting:

The CHAIRMAN: Order!

The Hon. BERNICE PFITZNER: If the Attorney looks at *Hansard* I think he will see that he was talking about small business. However, I will tell you now that I did consult thoroughly with publishers. They varied in what they said. Some said that they would not publish these kinds of prescribed matters, while others said that they would and that they had a different opinion to mine.

The Hon. C.J. Sumner: They didn't support the Bill, you mean?

Members interjecting:

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

The Hon. BERNICE PFITZNER: I wrote to—

The Hon. C.J. Sumner: The honourable member was asked a specific question; she did not supply an answer as to what the views of the publishers were—and apparently they are opposed to the Bill. The first time we hear about it is in the Committee stage.

Members interjecting:

The CHAIRMAN: Order! The Hon. Dr Pfitzner.

The Hon. BERNICE PFITZNER: I wrote to seven or 10 publishers and I had three replies. Of those replies, two were for and one was against. I do not have those details with me and, to my mind, the Attorney is asking me about small business. As I said, two publishers were for the Bill and one was against it. Even the one who was against it said that it was his philosophy and he understood how I felt. He was not completely against it and he understood the thrust of the Bill, perhaps more than the Attorney-General understands it. Any prescribed matter is included under the Classification of Publications Act and, therefore—

THE Hon. C.J. Sumner: Not in the context of advertising.

The Hon. BERNICE PFITZNER: Yes. The Classification of Publications Board uses the very same standards by which it classifies publications. At its meeting on 29 October, it looked at covers and advertising posters, and I have already made reference to demeaning sexual images, pictorial depictions, etc. The board uses the same guidelines on prescribed matters for covers and advertising posters. If that is the case, I do not see any difficulty with paragraph (c), which concerns advertising in a manner that depicts any prescribed matter.

The Hon. I. GILFILLAN: I continue to oppose the Bill, although I am not influenced by the points that the Attorney-General made. I do not care particularly about the impact on small business. The matter really hinges on what is the most appropriate way to keep a proper balanced control of the material that is displayed. If it imposes a cost on small business, so be it. If it does not, that is good news for small business. It is not a question of the dollars and cents that go through the cash register of a small business. That is important enough in its own context but not in relation to what is the most appropriate way to get a balance between the publication of insulting and damaging material, which may not offend all people but which does offend a section of the population who should be protected.

We have dealt with that principle in relation to Aborigines and disabled people and in other areas to which we as a community have been sensitive. We have an obligation to ensure that that principle applies in the case of advertising and published material, such as the cover of magazines. However, it is a subjective judgment and no one person will have an identical view with another, so it will never be resolved to everyone's satisfaction. However, I am not persuaded that this Bill is the appropriate vehicle to deal with it.

As I said in my second reading speech, it is an overreaction. I have supported the amendment of my colleague, the Hon. Mike Elliott, because to an extent it improves the Bill in that the aspect of demeaning the image or portrayal of an individual, a sex or group of individuals is a serious offence against which we should take appropriate steps. However, it relates not only to the sexual context. I am persuaded that serious attempts are being made federally. I am also convinced that the reaction to the *People* magazine was appropriate. It was probably a little tardy and next time round it will be a lot quicker. The system has been tuned up by the reaction and publishers will be a lot more sensitive. There may be a cleaning up of the situation for a time and there will be a testing period again, but that is the process one has to go through in the evolution of what the community will or will not accept.

My colleague and I have different views on this Bill but we do have a common mind as to what is undesirable in the impact of certain material. The way in which one poster depicted the female form profoundly offended a very important section of the community and all of us are duty bound to make sure that is prevented as much as is humanly possible. The steps that were taken are appropriate and the regime that is in place is adequate to address the problem. If in future I am shown evidence that it is not working and that other steps need to be taken, I will be prepared to consider them. However, in the current state of affairs, I am convinced that there is enough restraining mechanism and supervision in the guidelines so that we will not see a repetition of the circumstance concerning that unfortunate cover and promotional material.

The Hon. C.J. SUMNER: I will not pursue the issues that I raised although I do not think that they have been dealt with by the proposer of the Bill, that is, the effect of the measure relating to advertising. The questions that I raised have not really been answered but I will not pursue them at this stage because it seems that the Bill will pass and, if there is a serious prospect of its passing, no doubt people will give it more attention. I agree with the comments of the Hon. Mr Gilfillan and, for that reason, I continue to maintain opposition to the Bill.

The Hon. BERNICE PFITZNER: I shall respond to the Hon. Mr Gilfillan's concern about balance. As I mentioned during the second reading of the Bill, the Classification of Publications Act includes the guideline that the board has to give effect to the principles that an adult person should be entitled to read and view what he or she wishes and that members of the community are entitled to protection from exposure to unsolicited material that they find offensive.

At present, the South Australian Classification of Publications Board, which has contacted me, has said that

things it would have categorised under category 1 have to be put into category 2 and, if it had a facility that obscured or covered offensive or demeaning images, it would be put in category 1. I put it to the Committee that the Bill will give a better balance because, as items are presently classified in category 2 instead of category 1, that means that they go into what are known as adult sex bookshops, and that does not meet the guideline that adult persons are entitled to view and read what they wish. If all such publications went into restricted premises, that would limit the first principle. The Bill will ensure that publications remain where they are, but will be obscured and, therefore, the second principle that members of the community be protected from unsolicited material is also satisfied.

Clause passed.

Title passed.

The Hon. BERNICE PFITZNER: I move:

That this Bill be now read a third time.

The Council divided on the third reading:

Ayes (11)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, M.J. Elliott, I.T. Griffin, J.C. Irwin, Diana Laidlaw, R.I. Lucas, Bernice Pfitzner (teller), R.J. Ritson, J.F. Stefani.

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

Majority of 1 for the Ayes.

Third reading thus carried.

Bill passed.

STATUTES AMENDMENT (CHIEF INSPECTOR) BILL

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

LOCAL GOVERNMENT (FINANCIAL MANAGEMENT) AMENDMENT BILL

Returned from the House of Assembly without amendment.

PARLIAMENTARY COMMITTEES (PUBLICATION OF REPORTS) AMENDMENT BILL

Returned from the House of Assembly without amendment.

STATE BANK OF SOUTH AUSTRALIA (INVESTIGATIONS) AMENDMENT BILL

Returned from the House of Assembly without amendment.

STAMP DUTIES (PENALTIES, REASSESSMENTS AND SECURITIES) AMENDMENT BILL

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

CONSTRUCTION INDUSTRY LONG SERVICE LEAVE (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly intimated that it had agreed to the recommendations of the conference.

INDUSTRIAL RELATIONS (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

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

DRIED FRUITS (EXTENSION OF TERM OF OFFICE) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 November. Page 951.)

The Hon. PETER DUNN: This is a very short Bill, which extends for another year the term of the present board. I guess it is a bit of a reflection on the Government, because this was supposed to have been fixed in February. As yet it has not been sorted out, so it is necessary for the old board to continue to run the operation of the dried fruit industry. The Opposition supports the Bill fully.

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

WINE GRAPES INDUSTRY (INDICATIVE PRICES) AMENDMENT BILL

Second reading.

The Hon. BARBARA WIESE (Minister of Transport Development): I move:

That this Bill be now read a second time.

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

Leave granted.

Explanation of Clauses

Clause 1: short title. This clause is formal.

Clause 2: Amendment of s.3—Interpretation. This clause amends the definition of 'production area' so that the Governor may add to the listed areas of the State that form part of the production area any further areas declared by the regulation. The definition is used in section 5 of the principal Act to limit the application of indicative prices fixed by the Minister for the sale of wine grapes to processors.

The Hon. PETER DUNN: The Opposition agrees with this Bill, which started off last year and was brought about because grapes were sold in the three principal

areas that have State boundaries: Sunraysia, the Riverland and the MIA areas. Wine companies were purchasing grapes in one area and then, as the harvest came in, they waited until the price dropped and then would buy their bulk wine. Indicative pricing indicates to the people a range of prices that they can expect to get for their grapes, and it meant that it evened out the price, and people were getting roughly the same prices early in the season and late in the season.

This is an important piece of legislation. It is more self regulatory than any stipulation being made by the Government, and that is a good way to be. Last year we included the Riverland areas, and this Bill now includes all the other wine grape growing areas within the State.

Wine has become a popular product and we are now selling it in the export market. It is one of the few primary industries that is in growth, so it needs as much support as we can give it. We want wine areas to expand and have plenty of product, because I believe that Australia can probably produce about 3 per cent of the world export wine product. We are now producing about 1.8 per cent, and if that increased to about 3 per cent—and I am told by experts that that can happen—we will need to grow considerably more wine grapes throughout the Commonwealth, and particularly in South Australia, as this State produces about 60 per cent of Australia's wine.

The potential for export marketing is already established. If this indicative pricing assists in all parts of the State, including the Clare Valley, the Southern Vales wineries and the South-East, it needs support. Indicative pricing has proved to be a success where there is trading across borders and, if wine prices are levelled out, it is made more cost effective for producers, and winemakers can rely on those prices, I will support it. We all agree that that is for the betterment not only of the wine and brandy producers but also for the whole of South Australia. I support the Bill.

The Hon. M.J. ELLIOTT: At the time of the initial legislation in relation to prices, I said that I believed it would not work. When one considers that last season's grapes were in very high demand because of the boom in the export market, it would have been ideal conditions if indicative pricing was ever going to work. If one talks to the South Australian Farmers Federation in their ivory tower based in Adelaide, they will tell you that it works; after all, it was their idea. I can see one member of the Government nodding his head because he, too, has spoken to them. If one talks to the grape growers in the Riverland, even in the ideal season, the season in which grapes are in high demand, one will be told that indicative pricing did not work.

It did not work, and the growers will tell you so. I do not know to whom the Hon. Mr Dunn, has talked—he may have talked to the Farmers Federation in Adelaide—but I cannot believe that he has talked to growers up in the Riverland or else he would not have said what he did. In the real world, in the Riverland there are only two buyers in the market, and indicative pricing does not help the sellers when there are only two buyers. That is a basic rule of economics. The growers are still being squeezed relentlessly. During the same season that the minimum price was removed in South Australia, the Sunraysia district brought in minimum prices. Just when we, for the first time, were at the point of having the major producing regions having minimum prices at the same time, we pulled the plug and went the other way. Minimum pricing can work so long as you do not set minimum prices which encourage the inefficient growers. It is possible to determine levels at which the inefficient growers will not be propped up. I believe that can work. What I and the growers in the Riverland will tell you is that indicative pricing, even in what should have been their best season last year, did not work.

The Hon. J.C. IRWIN: I support this Bill, but I will fall somewhat between the contribution of my friend Mr Dunn and that of Mr Elliott. I will start with what is probably an annual complaint about short notice for this sort of legislation. I point out to the Hon. Mr Elliott that we are the second cab off the rank, so to speak, because the other House has already passed the legislation in two minutes. The legislation was introduced only yesterday; it certainly has not been through any Party consultation; and it certainly has not been through any lengthy or proper consultation with the growers and consumers and, therefore, we are doing it very much on the run and showing some flexibility in doing that. I can probably justify that in a minute along the lines that Mr Elliott has already mentioned, that quite frankly indicative pricing is a nonsense—it does not and it cannot work. All it is is indicative, and that is it.

I do not mind being flexible but my experience, short as it might have been in here, has taught me that even the most innocent and short piece of legislation can have a sting to it. My conservative nature tells me to hasten slowly. We are not even offered the opportunity to discuss amendments, because of the time limitations and trying to fit into the program here tonight. There probably may be some things that we could talk about later on, even in this short piece of legislation.

I am amazed that today we concluded the legislative discussions about the dairy industry to deregulate it. By 1995 the support for pricing will go and before the year 2000 there will not be any farm-gate price. That is totally deregulating the dairy industry, and here we are in the same breath on the same day moving towards a regulatory process with the wine grape industry, which can be construed—although I have already said that it does not mean much—as a move towards regulation. Minimum prices have already been mentioned, and if that is not some sort of regulation move, I do not know what is, but that has not been mentioned in this legislation.

I suspect any apprehension I may have had regarding the community acceptance or otherwise of the legislation is somewhat diminished when contemplating the ramifications for it. I said 'community acceptance or otherwise', because the interest of the grape grower is not the only consideration: there are the interests of the winemakers—and they are probably seen as the ogres in this market situation—for their product on the domestic and export market. Both markets, which have been mentioned by the Hon. Mr Elliott, are very important, because if they cannot sell that surplus on the overseas market and they do not get satisfactory prices themselves on the domestic market, then they do not have the funds

to pay for the grapes anyway. So, it is a classic market situation.

But we must also include the consumers—and I suppose I should declare an interest as a consumer, as are most members in this Chamber—because we have an interest in paying hopefully $5 or $6 for a good bottle of wine, rather than paying $20 or $30 in a restaurant which reflects not the price of the grapes but all the add-ons that go to help the restaurant make a profit. We know the basic price for which we can buy wine, and we know the cost of the add-ons to help with the costs of running a restaurant.

For some time, I was shadow Minister in this area, and I was quick to get out my file on this legislation—and not much went into the file, but it was certainly enough to give me some idea about the legislation. I will give the Council some advice on it. My apprehension was diminished when going through that file and I came across a letter from the Riverland Growers' Unity Association, which I imagine Mr Elliott would know about. Its contents add to what others have said in this debate, that the indicative price is pretty mickey mouse as it really does not mean anything. The letter was written to me at this time last year in the context of industry discussions about a minimum price for wine grapes. The association states:

> The Minister of Agriculture (and presumably the Cabinet) is attracted to the scheme...The scheme:
>
> (1) applies only to the irrigated areas—and thus, e.g. on 1990 vintage figures, to approx. 63 per cent of total Australian production, on a Riverland (33 percent), Sunraysia/Md Murray (15 per cent), and MIA (15 per cent) break-up.
>
> (2) recognises that these indicative prices will only be used by wineries as a guide (a fact openly admitted to them to the TPC); and
>
> (3) assumes that, armed with these indicative prices, the 1 000 plus individual S.A. independent winegrape growers will have sufficient bargaining power and skill, to go and negotiate their own actual prices (and quantities) for their own grapes with the relative handful of winemakers available to them.

Further, the letter states:

> He [the Minister] seems oblivious to the proposition that if (as the TPC itself has opined [13.25]—

(these proposed changes stem from a Trade Practices Commission draft declaration dated 9 October 1999, which will be for the vintage 1992-94 inclusive)—

> the proposed scheme will not provide the grower with any significant countervailing market power, the additional information becomes of purely academic interest.

That is what Mr Elliott has said. The wine grape industry Act talks only of what could be termed the Riverland as set out in section 3, 'Interpretation in the production area'. The Hon. Mr Dunn mentioned the Riverland. Under the heading 'Interpretation', section 3 defines 'production area' as:

> (a) the areas of the district councils of Barmera, Berri, Loxton, Mannum, Mobilong, Morgan, Paringa and Waikerie;
>
> (b) the hundred of Katarapko;

and I have never heard of that, but I understand it is northwest of Loxton—

> (c) the hundreds of Bowhill, Fisher, Forster, Nildottie and Ridley in the area of the district council of Ridley;
>
> (d) the hundred of Skurray in the area of the district council of Truro;

[Midnight]

When I looked up some maps in the library this evening, I found that that area is west of Blanchetown. Clause 3(1)(e) refers to the municipalities of Murray Bridge and Renmark, and why they are in the same line, I do not know, because they are reasonably far apart; and (f) refers to the counties of Young and Hamley. Young is north-west of Waikerie and Hamley is north of Renmark. I must declare another interest here because my son's property is in the hundred of Young, and I did not know that until tonight. I do not understand how that is wine grape growing country. It is pure red, dusty and very good pastoral country either side of the Murray River, but, other than right by the river, I cannot understand why that whole area would be declared part of this indicative price area.

I do not quite understand, and I am sure that the Minister will not be able to help me with that one in the explanation later on. This Bill leaves in references to the areas that make up what I broadly call the Riverland and now includes the rest of the State. I do not know why the Minister is hell bent on being prescriptive about that Riverland area yet not when it comes to the rest of the State. I know that other parts of the State will be included by regulation but, with that very prescriptive beginning, I do not understand why every part that needs to be added to the list does not come in by an amendment to the Act which then is prescriptive for that area.

The Minister of Primary Industries in another place said, looking at *Hansard,* that the current wine grape legislation should be broadened to allow the setting of indicative prices or indicative price ranges in non-Riverland areas of the State, and he named the Barossa Valley, Southern Vales and the Clare area. In the explanation, the Minister in this place has incorporated the phrase:

> Any further areas will be declared by regulation.

There is no mention of some of the major wine growing areas. I know that the Minister of Primary Industries has a brother who is a winemaker, as I heard him talking to his brother who is somewhere in America, perhaps in the Colorado area. He was talking about wine and the problems with phylloxera and downy mildew. They were having quite a family discussion about it. But I do not know why the Minister was prescriptive about these three areas of the Barossa Valley, Southern Vales and Clare when he left out the Adelaide Hills, which is now becoming quite a significant wine growing area, and the South-East.

Members interjecting:

The Hon. J.C. IRWIN: Yes, but the Coonawarra is not boutique wines. It is masterfully made, good terra rossa soil reds, the best in the State. And there is Padthaway. I notice that my colleague Mr Baker did not declare an interest in this matter, although he has some renowned Chardonnays and sparkling wines.

The Hon. M.J. Elliott: Most of the stuff is owned by wineries, not by the wine growers.

The Hon. J.C. IRWIN: That is the explanation. However, before saying that I wanted to say that even Boston Bay winery just north of Port Lincoln was not mentioned, and we will have a huge wine area on the

Eyre Peninsula soon. But the explanation I had about the Coonawarra was that the Coonawarra-Padthaway area was made up mainly of owner-growers and, therefore, there is not the same problem as there is in the Riverland, where people grow mainly on contract or on a year-to-year price arrangement with the wineries. Further in the explanation of clauses we are advised that 'any further areas declared by regulation' can be added. The definition is used in section 5 of the principal Act to limit the application of indicative prices fixed by the Minister for the sale of wine grapes to processors. I do not understand why we leave the Riverland area in section 3 sitting on its own. Who will decide what area is going in? If it is good enough to have certain areas in the Act, why not the others?

The Adelaide Hills and the South-East have one difference, and that is the one we have noted about being owner-growers. The Minister in this place, either in the second reading wrap-up or during the Committee stage, may be able to explain to us whether there will be an indicative price difference between the various regions that takes account of the different qualities and climates. I understand from clause 5 of the Bill that the price may vary according to the varieties of wine grapes, and I will give some indication of those in a moment.

It is fairly clear to most people here that there are different qualities of wine between regions. The grape might be the same but the area might not be as irrigated or the climate might be cooler and therefore, quite rightly, they should be able to have a differentiation in the indicative price, for what it is worth. If the Minister cannot answer that tonight, I will be quite happy to have some explanation of it later on. How is that indicative price going to show up the differences between the same grape grown in different areas?

The indicative price area mentioned in the Bill was the Riverland, which is predominantly irrigated and a hot climate, certainly warmer than in the rest of the State for wine growing. I suppose that I am sticking out my neck, but to my knowledge the best wine grapes are produced in the cooler climates. The northern and southerly areas of the Adelaide Hills, the Southern Vales and the South-East have that favourable growing climate.

It is fairly obvious that the Riverland grows a lot of bulk wine, with its irrigation and with varieties suited to that area, and because of their cooler climate and, perhaps, a little more stress, other areas do not grow so much in bulk but grow more of quality. The South Australian Farmers Federation (formerly the United Farmers and Stockowners) published for the 1992 vintage what I would call an informal indicative price list, clearly showing the differential in many cases between Clare Valley grapes and Barossa grapes. The UF&S, as it then was, did not have any right by legislation to publish prices, but I am just looking at news releases in December for the Barossa wine area and the Clare Valley, which they call 1992 vintage indicator prices.

They are not the prices referred to in the legislation but they are their own indicator prices. Unfortunately, I did not have time to get hold of the official indicative price list put out by the committee that looks at this prior to the vintage to compare it to those that I will give you now.

For instance, in the Clare Valley chardonnay is $700 a tonne, which is exactly the same as the price in the Barossa. For chenin blanc it is $400 tonne in the Clare Valley and $430 in the Barossa. Riesling in the Clare Valley is $500 a tonne, while in the Barossa it is between $350 and $450. Sauvignon blanc is $500 a tonne in the Clare Valley and $450 a tonne in the Barossa Valley. Semillon is $600 a tonne in the Clare Valley and $500 a tonne in the Barossa. In relation to reds, cabernet sauvignon is the same in both places, at $800 a tonne. Merlot is exactly the same, at $700 a tonne. Pinot Noir is $600 a tonne in the Clare Valley while it is $500 in the Barossa. Shiraz is $700 a tonne in the Clare Valley and $650 in the Barossa. Again, these are only indicative prices, and they are even more informal than the other ones, but they illustrate the point I was making, with just those two reasonably close winegrowing wine areas of the State, the Barossa and Clare Valleys. Going further south there may well be some differentials. Will they been shown or will there just be a price of all the different grape varieties throughout the State making the base?

I conclude by referring to a UF&S (as it then was) news release of 23 January this year after, I presume, the Riverland indicative price list had been determined, because that is normally done by the committee in December and they try to have it out in December/January prior to the harvest. I quote from this press release headed, interestingly, 'Wine grapegrowers demand price determined by the market':

> With the 1992 vintage about to commence, wine grapegrowers are demanding that winemakers allow market forces to determine prices for wine grapes. According to the Chairman of the UF&S Wine Grape Section, winemakers have consistently argued that grape prices should be determined by market forces...If market forces prevail then the 1992 vintage prices, particularly the varietal fruit, should increase, compared to prices paid in 1991.

I presume that the UF&S was talking for the whole of its membership, which would cover the entire grapegrowing area, including the Riverland. It concludes:

> I call on grapegrowers to reject prices offered by winemakers if they are below the indicative prices developed by the UF&S and the Wine and Brandy Producers Association.

The South Australian Farmers Federation, as it is now, representing their growers, seem to want it both ways—market prices and nothing below the indicator level. I have not had time to find out what they really want, but I understand that they support this Bill and the indicator prices and that they do want the Bill through before Christmas. We are all trying to help with that process and it will be before Christmas. Perhaps this is another indication that the indicator prices are really nothing to get very upset about, or very excited about. With that, I support the Bill.

The Hon. BARBARA WIESE (Minister of Transport Development): I thank members for their contributions to this debate and for their cooperation in assisting with the passage of the Bill. As pointed out by the Hon. Mr Irwin, this Bill was only introduced in the other place yesterday. The cooperation that has been shown by members of all parties in enabling this Bill to pass in such a short time is very much appreciated. As far as I understand, it would not have been possible to

introduce the legislation much earlier than this, in any case, because the matter has only very recently been agreed to by way of letter from the South Australian Farmers Federation and the Wine and Brandy Producers Association, in correspondence dated 13 November. So the Minister has acted very quickly since the agreement was reached in gaining Cabinet approval for the introduction of this Bill and getting it into Parliament with as little time elapsing as possible, in order to meet the wishes of the industry to have this legislation passed before the end of the year.

I do not have an officer here who can advise me tonight on some of the issues that were raised, by the Hon. Mr Irwin in particular. However, I undertake to refer those matters concerning the criteria for the designation of areas and the indicative prices according to particular areas to my colleague in another place and I will ask him to reply to those questions during the coming weeks.

Bill read a second time.

In Committee.

Clause 1—'Short title.'

The Hon. M.J. ELLIOTT: During the second reading debate I made a comment which, on reflection, may have been wrong. When talking about minimum prices I referred to minimum prices being set up in the Sunraysia district, but I think in fact it was the Murrumbidgee irrigation area. One other comment pertaining to this area is that we must realise just how sensitive growers are to price fluctuation. If you can transfer 15c on a bottle of wine back to the growers, the average grower's income will more than double. I do not think people realise that. So a relatively minor change in the price of grapes and a relatively minor change in the price of wine is very significant to growers. It is under those circumstances that indicative price systems, in what is essentially an oligopoly operating in areas like the Riverland, really means the growers are being squeezed, and unreasonably so because the consumers do not get any significant benefit from it.

The Hon. PETER DUNN: Is it the intention of the Minister to regulate in relation to all areas of the State? It clearly states:

> any other part of the State that the Governor may, by regulation, declare to be part of the production area;

Does the Minister intend to include all the rest of the State or just a part of it?

The Hon. BARBARA WIESE: I am not aware of the Minister's intention in this regard. I will have to take that question on notice and ask the Minister to respond to it during the next few weeks, if that is acceptable to the honourable member.

The Hon. PETER DUNN: I am not worried about it but it would be nice to know what is intended. There has been a fair bit of talk about indicative pricing. Originally, it was for the Murray River irrigation area, the Riverland and the Sunraysia area. Wine producers would start buying their grapes in the Riverland and then the Sunraysia grape growers would drop their price, so the winemakers headed off to Sunraysia. Then the MIA growers dropped their price, so it went round in a circle. This measure gives an indication to growers of the range of the price and it is intended to help grape growers, not wine producers. I make that point clear to the Hon. Mr Elliott because he is a little confused as to what this measure does. In fact, the conclusion I drew from his second reading contribution is that he is totally confused.

The Hon. BARBARA WIESE: I have one piece of information that might be of assistance to the Hon. Mr Dunn. I point out to him that the second reading explanation indicates that it is one of the intentions of the legislation to allow for a broadening of the setting of indicative prices to include non-Riverland areas of the State, namely, the Barossa Valley, the Southern Vales and the Clare district. I presume that it is intended that those areas will be included for the purpose of this legislation and I am sure that, if other areas of the State were intended to be included at this time, they would have been mentioned.

Clause passed.

Clause 2—'Interpretation.'

The Hon. J.C. IRWIN: My question relates to paragraph (g), which refers to any other part of the State that the Governor may, by regulation, declare to be part of a production area. What consultation process will there be for the regulation to be drafted? Who will be consulted in drawing up those areas of the State that will be nominated by regulation for extending this indicative price area? The Minister might also pick up some questions from my second reading contribution to which I would appreciate an answer.

The Hon. BARBARA WIESE: I will undertake to refer that question, along with the other questions that were raised earlier. However, I advise the honourable member that two obvious organisations that will be consulted are the South Australian Farmers Federation and the Wine and Brandy Producers Association. I imagine that the Minister will want to consult with local grower associations before any new areas are included. I will refer that question to the Minister, who can confirm or correct the comments that I have made.

Clause passed.

Title passed.

Bill read a third time and passed.

STATUTES AMENDMENT (CHIEF INSPECTOR) BILL

Second reading.

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

The Bill seeks to delete reference to the Chief Inspector in various safety related Acts and to replace them with the Director, Department of Labour and to confer power on the Director to delegate specific responsibilities to appropriate officers. Consequential amendments are also required to the Noise Control Act.

Modern legislation places the administrative control under the Director as the Chief Executive Officer with power of delegation as deemed appropriate. It was intended that these Acts be amended in conjunction with Bills introduced for other amendments as the need arose. However, due to the recent

retirement of the Chief Inspector under three of the Acts, urgent action is needed.

The Bill also seeks to amend the membership of the Mining and Quarrying Occupational Health and Safety Committee following the transfer of the regulation of occupational health and safety in the mining and petroleum industries from the Department of Mines and Energy to the Department of Labour. As a result of that transfer it is now appropriate that an officer of the Department of Labour with experience in mining and quarrying be a member of that committee in place of the Chief Inspector of Mines or his/her nominee.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1 is formal.

Clause 2 provides for the commencement of the measure.

Clause 3 is an interpretative provision.

Clauses 4 to 15 make a series of amendments to the Boilers and Pressure Vessels Act 1968. Clause 4 strikes out the definitions of 'Chief Inspector', 'Director' and 'Inspector', and includes new definitions of 'Director' and 'Inspector'. Clause 5 revises the procedures for the appointment of inspectors under the Act. Clause 6 makes a consequential amendment. Clause 7 revises the delegation powers of the Director under the Act. Clauses 8 to 15 (inclusive) delete references to 'the Chief Inspector' and replace them with references to 'the Director'.

Clauses 16 to 40 make a series of amendments to the Explosives Act 1936. Clause 16 strikes out the definition of 'chief inspector' and substitutes a definition of 'the Director'. Clause 17 deletes a reference to 'chief inspector' and replaces it with a reference to 'Director'. Clause 18 revises the procedures for the appointment of inspectors under the Act. Clauses 19 to 38 (inclusive) delete references to the 'chief inspector' and replace them with references to the 'Director'. Clause 39 empowers the Director to delegate any power or function under the Act to another person engaged in the operation of the Act. Clause 40 is another amendment relating to the 'chief inspector'.

Clauses 41 to 51 make a series of amendments to the Lifts and Cranes Act 1985. Clause 41 enacts new definitions of 'the Director' and 'inspector'. Clause 42 revises the procedures for the appointment of Inspectors of Lifts and Cranes under the Act. Clauses 43 to 49 (inclusive) delete references to the 'Chief Inspector' and replace them with references to the 'Director'. Clause 50 empowers the Director to delegate any power or function under the Act to another person engaged in the administration of the Act. Clause 51 is a consequential amendment.

Clause 52 makes two related amendments to the Noise Control Act 1976.

Clauses 53 to 63 make a series of amendments to the Occupational Health, Safety and Welfare Act 1986. The definition of 'the Chief Inspector' is to be removed. A definition of 'the Director' is to be included, as is a definition of 'the designated person', which is particularly relevant to the operation of section 66 of the Act. Clause 54 revamps a reference to the Director of the Department of Labour. Clause 55 is related to the amendment of section 66 of the Act. Clauses 56, 57 and 58 provide for a series of consequential amendments. Clause 59 replaces references in section 66 of the Act to the 'Chief Inspector' with references to the 'designated person' (as defined). Clauses 60 to 63 (inclusive) make a series of consequential amendments.

Clause 64 makes an amendment to the Workers Rehabilitation and Compensation Act 1986 to alter the membership of the Mining and Quarrying Occupational Health and Safety Committee.

Clause 65 preserves the appointments of inspectors under the various Acts.

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

STATE BANK

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

Leave granted.

The Hon. C.J. SUMNER: Yesterday in debate on the State Bank Bill, I gave certain figures relating to the costs of the inquiry. Overall, those estimates were reasonably accurate. Some assessment had been made of the costs to the end of this month, that is, to the end of November, which show that they are more than those to which I will now refer. However, in one area the. approximation that I made about the costs was inaccurate. That referred to the Auditor-General's legal fees, which I indicated might amount to $3 million by the end of this month. As at 31 October, they were $1.02 million, but that figure will now be higher almost a month later. I thought I should draw that to the attention of the Council.

The bottom line figures are approximately the same as the amounts that I indicated, the total cost to 31 October being $29.08 million. Of that, the legal costs, which include the cost of Crown representation, which is not a direct impost on taxpayers, was $16.37 million. I said it was approximately $17 million and it may be that, by now, that figure is getting closer to that mark. To ensure that there is no misunderstanding, I seek leave to have a purely statistical table, which sets out the costs as at 31 October 1992, inserted in *Hansard.* Members would understand that, a month later, those costs have increased to some extent.

Leave granted.

STATE BANK INQUIRIES
TOTAL COSTS TO 31 OCTOBER 1992

	$ Millions		
	Non-Legal	Legal	Total
Royal Commission:			
Salaries and Related Costs	1.10	—	1.10
Counsel and Solicitor Fees	—	3.81	3.81
Administration	2.06	—	2.06
Opposition Legal Fees	—	0.75	0.75
Crown Representation	—	1.30	1.30
Total Royal Commission	3.16	5.86	9.02
Auditor-General:			
Salaries and Related Costs	0.83	—	0.83
Consultants	8.00	—	8.00
Legal Fees	—	1.02	1.02
Administration	0.72	—	0.72
Total Auditor-General	9.55	1.02	10.57
Combined Inquiry Bank Legal Costs:			
Finlaysons	—	3.60	3.60
Piper Alderman	—	4.20	4.20
Goldberg & Co	—	1.60	1.60
Corrs	—	0.09	0.09
Total Combined Costs	0.00	9.49	9.49
Total Costs	12.71	16.37	29.08

MOUNT LOFTY RANGES

The Hon. T.G. ROBERTS: I move:

That the second report of the Environment, Resources and Development Committee on the Mount Lofty Ranges Management Plan and Supplementary Development Plan—Planning Issues, be noted.

The evidence that the Environment, Resources and Development Committee collected over a long period of time and presented in this report was put together by a very committed team. The cooperation that was referred to by some members when talking to the reports of other committees yesterday was evident also in the drawing up of this report.

This matter was quite controversial. A lot of uncertainty had been built into Mount Lofty Ranges development planning and programming because of a series of decisions affecting land owners. It was quite clear that people were looking for a committee before which to place their arguments about some of the proposals that had been developed over quite a long period of time.

The evidence that we took and the manner in which it was given did not allow us to put to rest some of the fears that people had in relation to their own programs concerning the ownership of the land, but we were able to confirm that the report would recommend to the Government a management plan that would achieve the aims that we had set ourselves, and that was for rural reconstruction to protect and improve water quality, monitor agricultural practices, pollution and bushfire control and to look at some of the development problems that were associated with tourism.

We found that a lot of the problems were interwoven, and we had to separate the planning issues associated with the increased density of urbanised living and look at the priority of maintaining a clean water supply for the metropolitan area. The major problems we found were that the ranges collected approximately 60 per cent of our metropolitan water requirements and, if the degradation of that land and the urban and agricultural pollution that was occurring in the Mount Lofty Ranges catchment area continued, we would be continually dosing our water supply to a point where it would become dangerous to drink.

A number of statements have been made by groups, individuals and organisations about the quality of Adelaide's water supply and the problems that are associated with chlorine and copper sulphate dosing. A recent outbreak of blue green algae alerted a lot of metropolitan people to some of the problems that not only the Government but also the community has generally in protecting that area so that it becomes a water catchment area that is also able to manage the current use of the Mount Lofty Ranges as it relates to agriculture, tourism and general rural township living.

The mixture of evidence was in my assessment, in some cases, alarmist, and in some cases there were some understated views about the problems associated with township developments. Some evidence suggested that, as long as we contained the urban pollution problems associated with manageable living practices, we could put a lot more people into the Mount Lofty Ranges. Other people said that not only agriculture but also pollution was causing the problems. I guess there was prioritisation of those issues in people's minds about what actually was the cause.

I think the committee's recommendations and the conclusions that we drew in the report indicate that there are a number of point source pollution problems associated with water catchment, a number of broad-based pollution problems that have been dealt with slowly, and that a multiplying factor is associated with some of those pollution problems, both inside and outside the water catchment area.

The committee did a tour of the Mount Lofty Ranges and took quite a lot of evidence from local government, real estate people and conservation groups. It was pleasantly surprising to find a whole network of people who had been pulled together probably over the past 20-odd years and who were concerned about the way in which the Mount Lofty Ranges was heading in terms of the problems that were starting to emerge through high density living and poor agricultural practices.

The committee found it necessary to call as witnesses people who were associated with agricultural use and conservation concerns to try to get a balanced perspective about what actually exists in the Mount Lofty Ranges at the moment and what we, as a committee, could recommend as a way of coming to terms with our set objectives.

We came to the conclusion that the long-term future of viable agriculture had to be assured and maintained but that it had to be done in a way that complemented the environment and did not place at risk point source pollution or broadbase pollution associated not only with agricultural chemical use but also large diary herds, piggeries and the way in which agriculture is carried out in terrain where it can lead to land degradation and the filling up of Hills streams to a point where they do not serve the purpose for which nature designed them.

Evidence was taken and a visit made to the Hills to look at some of those problems that were starting to emerge. I think the committee came away with the view that something had to be done and done reasonably quickly so that the Government could act on the recommendations that the committee was drawing up so that a lot of the problems associated with the concerns of those people who put evidence before us could be alleviated.

The objectives with which we started out were fairly broad and met with the approval of those who placed evidence before us. They were quite heartened to see that the Parliament itself was taking a broad interest in a lot of the issues that they saw as concerns. A lot of wider perspectives were being put before us which were based not on individual interest but on a concern for the local environment, water quality concerns and basically a healthy concern not just for the Hills themselves but for water quality problems that were emerging for the metropolitan area.

Australians and South Australians tend to be a caring section of society, and that showed in a lot of the contributions that were put before us. It was just not the syndrome of 'it is not my backyard': many of the witnesses had a broader perspective about some of the problems that were emerging in the Hills area.

One of the problems with which we had to wrestle was whether to recommend the drawing up of three

management plans for the three distinct regions in the Mount Lofty Ranges development area: one based on the northern areas around Williamstown; the other at what could be called a central area from Stirling through to Mount Barker; and another one that could be called a southern region or zone to Goolwa or Victor Harbor.

We could have taken three distinct zones and recommended a different strategy for the three areas with an overall management authority for those areas. However, in the end, although there was a lot of debate about the way in which that could have been handled, we finally came away with a position that recommended one management plan but with reference to the three distinctive areas. There was also a greater role for local government in those areas to be able to cooperate together and to make sure that the managed development that was to occur was done in a way that complemented the tone and nature of the region at which they were looking.

I suspect that out of the recommendations for a cooperative management plan between the three distinctive regions in the one Mount Lofty Ranges management area over time a more cooperative climate will be set between the local council areas. It is my assessment that some of the smaller councils in the area will amalgamate and that eventually there may be a better management structure for the area with perhaps a few larger council areas within those distinctive zones.

The other area we looked at involved planning strategies for improving the water quality and not just maintaining it. That involved trying to remove some of the development plans from the water catchment zones and enabling people to transfer their titles into townships or other areas. It was fairly clear to us that, if the water quality was to improve, the catchment areas had to be protected at all costs.

The Conservation Council and other groups that put evidence before us were certainly convinced over a long period of time that something needed to be done to improve the chances of the water catchment areas being able to supply clean quality water into the dams and reservoirs around Adelaide so that dosing could be reduced. There was a mature attitude to the way in which people approached that problem. Not just the cooperation that we had between the individuals on the committee but also the number of meetings that were held by various groups over a long period of time in the Mount Lofty Ranges area need to be commended.

The cooperation that had developed between the groups in trying to come to terms with the problems needs to be highlighted, because certainly many people who gave evidence to us had been grappling with the problem over a long period of time, and they were glad that somehow or other the fruits of all their work were finally coming to fruition.

Quite a network of community-based organisations was working on a multitude of problems associated with the quality of life not only for themselves but also for plains dwellers. It was good to see them coming together and putting their views before the committee. I must also say that the cooperation varied in departments that had been working together with those groups, individuals and organisations. Some departments worked very well with those groups and organisations, but more cooperation and information could have been supplied by the E&WS Department, and I suspect that at some stages there was a reluctance to share information with groups and individuals around some of the problems associated with point source pollution in the early stages of the meetings prior to the Mount Lofty Review being completed. Some of the teething problems were associated with the lack of trust between the conservation groups and the departments. I think it melted over the period that they were working together, and towards the end there was a far more honest and open approach to the sharing of information and the ability to work together.

Many problems have been raised about whether the hills face zone should have become a part of the Mount Lofty Ranges management plan or whether it should remain a separate area, and that debate will continue. Certainly, views were put before us that local government in the hills face zone areas are quite capable of putting together management plans that would have been able to be supported without being a part of the broader range management plan for the ranges. However, I think that point is still being discussed.

Many other points that were distinctive to the three separate zones were picked up, but overall there was a healthy maturity about the debate. Certainly, population levels must be looked at in terms of development problems associated with rural and urbanised living. A service program has to be put together so that the problems associated with close urban living, that is, sewerage, drainage and stormwater, can be addressed. We cannot close our eyes and flush them away any more: closed living programs must be put together so that the environment is not polluted to a point where it ends up in our catchment areas.

There is certainly an acknowledgment that you cannot separate out one urban or rural area and hope that the lifestyle does not impact further down the road. Everybody now knows that you cannot have distinctive units separate from each other: they all have to be seen as compact units that must be aware of each other's problems further downstream. That plan is now being developed through all the contact that I mentioned earlier, with cooperation from the departments, and the plains and hills face dwellers.

Readers of *Hansard* will see that the stocktake that the committee has done in the first part of its report falls in line with pulling together those problems so that recommendations—and our recommendations will come to grips with a lot of those problems—are put in place so that there can be a reduction in the problems associated with point source and broad based pollution into our water supply. Hopefully, the water quality will improve to a point where we can make reductions in the amount of dosing by chlorine and copper sulphate and bring home to those residents in the Mount Lofty Ranges that whatever their lifestyle is it needs to be protected to a point so that it does not impact on others in any other way. With those few words, I commend the report to the Council.

The Hon. M.J. ELLIOTT: This second report of the Environment, Resources and Development Committee is the first of two reports in relation to the Mount Lofty Ranges Management Plan and concentrates on the issues

raised by the supplementary development plan issued early this year. That development plan caused a great deal of ruckus in the ranges. Part of that was politically inspired due to preselections that were going on in one Party, but I will not follow that path further at this stage. Anyone who read the newspapers at the time would find almost everybody had something to say who was seeking preselection for one of two State seats. That is away from what the committee looked at. But certainly there was much argument about the effectiveness of the development plan, and I think that argument was coming from several directions.

At the end of the day, the committee rejected the current development plan. It felt that components of it really were not workable and suggested that a new development plan be drawn up. It was our belief that there were five key objectives that have to be taken into account when the new development plan is drawn up—and I am sure there will be a new one: first, the long-term future of viable agriculture in the area must be assured; secondly, the quality of water for Adelaide must be maintained and improved; thirdly, the conservation of existing native vegetation and the continuation of reafforestation must be assured; fourthly, the scenic amenity of the area as urban hinterland must be maintained and enhanced for tourism and recreational purposes; and, finally, the future planning strategies of the Mount Lofty Ranges should be based on land use and on land capability rather than on development potential. We have those five objectives, and those objectives need not be mutually exclusive. In fact, anything that we do in the Mount Lofty Ranges in future needs to take all five into account. I would argue—and most people would accept this—that there are solutions which are not really compromise solutions; there are solutions which can achieve all five objectives.

The first recommendation is that a new supplementary development plan be drafted retaining the present review boundaries thereby ensuring the integrity of the Mount Lofty Ranges region as a whole, with the new SDP incorporating the objectives outlined by the committee and applicable to the total area while allowing for council-area specific planning regulations to meet unique requirements of particular council areas. So, I think that the committee believes that there can be some variations from council area to council area in planning regulations, but there will be some overall rules which will apply across the total area; for instance, the issue of water for Adelaide is not an issue in some council areas but is in others. So, there will be variation from one council area to the next.

Secondly, the committee recommends that clear strict guidelines based on the objectives outlined in this report be issued upon which planning applications are to be assessed. The committee further recommends that these guidelines be stringently applied. Unfortunately, under the present Planning Act, the word 'prohibited' does not mean prohibited. *M*any developments which are prohibited have been allowed to proceed. This committee is saying that, as far as it is possible to make the guidelines clear and strict, we should do so, so that certain developments are likely to be rejected if they are inappropriate, if they do not meet the five objectives that the committee believes are important. Things *c*an be done to increase the likelihood that those guidelines will be stuck to, and I believe that recommendation 3 is crucial to that.

The third recommendation recommends that a system of voluntary transferable development rights appropriate to single as well as contiguous titles be developed and that such development rights be transferable to target areas, either in townships or in rural living areas, which must be of low agricultural, conservation and water catchment value. At present, under the current SDP, the only titles that will be transferred in the water catchment are half of the contiguous titles, which amounts to about one quarter of the total vacant titles in the watershed. Under the current SDP, it is quite likely that three-quarters of the vacant titles in the watershed would be developed *in situ.* There are a couple problems there: first, it is not equitable. The fact that half-contiguous titles will and must be transferred, whereas that is not required of any of the single titles means that it is inequitable in that sense. It is affecting people with contiguous titles and not those with non-contiguous, single titles. But looking from the other viewpoint, there may be some people with single titles at present who do not have the option of transferring and who might take it up. In particular if our second recommendation is picked up and if the planning authorities are more willing to reject development where it is inappropriate, then those people that have had a refusal will now have the option of transferring the development right.

I believe that is a step forward. It will take some pressure off the planners in that at present, if they deny development, that means that the owner of the land immediately loses a significant cash value. Now this cash value can be recouped by way of transferability, and I think that the subtle or, perhaps, not so subtle pressure on the planning authorities will be removed and they will be less likely to stray from the objectives which, I hope, will be incorporated within the development plan. The final recommendation of the committee is that areas of hard zoning be introduced around townships within the ranges area to protect the town boundary and limit its encroachment into agricultural areas. Hard zoning is used overseas, and I have seen it in several cities. Basically, one draws a line around the city and says that the development of the town or city will not go past this line. What it means is that the area beyond it now will be solely agricultural land and will be valued as agricultural land.

At the moment, farmers near townships suffer badly. It happens throughout the Adelaide Hills and around Adelaide generally that their land has a value because it is expected that at some time the city or the town will expand on to their land. That is fine if you want to sell, but if you are in the business of farming and actually want to stay there, your rates will go up in response to those valuations. If we can have hard zoning and the expectation of spread into those areas is removed, then the land will have only agricultural value, this will happen in perpetuity and, as such, the farmers will be helped significantly.

Any farmer who has a number of titles in such an area will receive some recompense in so far as the development rights of those titles can be on-sold. In the water catchment, I guess it is most likely that that will be

sold into existing townships. Outside the water catchment, I think that the committee believes that there can be target areas, as mentioned in recommendation three. There are areas that are of low agricultural, conservation and water catchment area value into which the titles could be transferred.

So, there will perhaps be some rural living blocks but hopefully, unlike the present situation where some of them are on good agricultural land or land that is important for conservation and water catchment areas, that will not continue to occur. If I had the opportunity to write a report myself, I would have gone further than this report in some regards but there is no doubt that the committee has come to a set of objectives and recommendations which I believe are workable and which, if properly implemented, will tackle the problems in the Mt Lofty Ranges. The major task for the Government now is to pick up these recommendations and to implement them within an SDP. That will not be an easy task, but it is an urgent one because, as I said, the current scheme not only does not have much support but I do not believe it is capable of achieving the objectives our committee thought were so important. I support the motion.

The Hon. PETER DUNN: As a member of that committee, I should like to say a few words. I do not want to refer to the report so much as to say that we all agreed at the time that we hope the Government will take up this report. It may not, but we hope that it will. It was as a result of an SDP brought in in the early part of this decade, which caused a great deal of disruption because it was inequitable. The principal objection was that people with contiguous titles could not develop the land, while people who had titles that did not touch one another could. That situation was quite inequitable. The fact is that we need a good water catchment area. We need water for the city, and the city will have to pay for it. It will pay for it one way or the other. You cannot expect Hills dwellers to pay for city people's water: that is as plain as the nose on your face. I do not expect them to bear all the cost, but I do expect city people to contribute something towards it.

Then again, I do not expect people in the Mid North or the South-East to contribute towards that or, for that matter, people on Eyre Peninsula or in any other part of the coast. Water is being caught for the purpose of the city; therefore the city ought to be paying for it. In regard to transferable titles, let me say one thing: that is, where will they go? I have agreed with this, but the question occurs to me, where are they going to go?

Where will they be transferred to? Who will buy them? More titles will have to be created somewhere. More blocks will have to be created for people to be able to transfer those titles. Sometimes I wonder where they will go. There are many people who know more about it than I because I do not have a great knowledge of land transfer and land titles. I just wonder in the practical application where those titles will go. If a block of land were purchased south of Adelaide somewhere, outside the water catchment area, could it be subdivided with another house put on it, and thus another title would have to be bought from somewhere in the water catchment area? Is that what would happen? That is subdividing, and that is not acceptable. I do wonder where we will transfer those titles to.

The development right that used to apply to all those blocks and allotments in the Adelaide Hills is now back on them. If those people want to develop that land, provided they meet the criteria that the Hon. Mike Elliott read out a while ago, they can build on those blocks. That is fair and reasonable. Most of the blocks vary in size, but in the water catchment area they are about 60 acres. We have to avoid the run-off into water catchment areas, for whatever reasons. It could be sewage, which is one of the worst polluters because it is high in both phosphates and nitrates. We have to stop that. Maybe we need deep drainage in most areas. If a single house is on a rather large block, the problem of sewage disposal can be eliminated by spreading it out over a fairly large area, although the Adelaide Hills is a fairly high rainfall area, and there will always be some run-off into the river—

The Hon. K.T. Griffin: Plant some trees.

The Hon. PETER DUNN: Yes, as the Hon. Trevor Griffin says, plant some trees. Wood lotting is a marvellous way of soaking up effluent. It is a very productive and very expensive area. It ought to be considered for agricultural production such as market gardening or dairying, if it is necessary. I point out the marvellous advances that primary producers in that area have made in their techniques so they do not have run-off from their land. Dairies have traditionally been thought to be bad polluters, but they are now ponding their run-off before it gets into the water course. The more progressive farmers are setting that up now. If the few examples that we saw are adopted by dairy farmers, we will have better and cleaner water run-off in the long term.

It is interesting to note how the market gardeners have adopted a sod culture, which results in very little dirt and chemical run-off from those areas. Even though they have relatively high applications of chemicals to grow their produce, there is very little run-off from those areas. Even better is perhaps the growing of vines which do not require high quantities of phosphate and nitrate. With sod culture under them, they are one of the better types of agricultural production in the Hills. All these matters will have to be addressed later.

Certainly the towns will have to have good effluent disposal. Whether or not the city has to help pay for some of the sewage disposal, be it deep drainage and treatment works, or whether we can pump away the effluent, a cost is attached. I am not an expert in this area, but I understand that those things can be done. I think the report is reasonable. There is still more to come. I just hope that the Minister, who made a boo-boo in the first place and did not look at the effects down the track and the practical application of the original SDP which created many problems, can correct the problems. She had plenty heaped on her because she brought it down without any consultation. She received bad advice from the E&WS and some of her planners and, as a result, the matter was referred to the Environment Resources and Development Committee for a little further research. We have done that.

Maybe the Minister will not adopt all of our recommendations, but they are fair and reasonable. They do allow development rights on land that is there, although there are certain criteria before that right can be

exercised. If they meet that criteria—and they have been read out—that is fine. I recommend the report to the Council.

Motion carried.

[Sitting suspended from 1.11 to 2.20 a.m.]

INDUSTRIAL RELATIONS (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

Consideration in Committee of the House of Assembly's message that it had disagreed to the Legislative Council's amendments.

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

That the Council insist on its amendments Nos 1 to 6, 10 to 14, 27, 28, 30 and 31; and that the Council does not insist on its amendments Nos 7 to 9, 15 to 26 and 29.

I foreshadow that, if the Council does not insist on the amendments to which I have referred, then I will move that alternative amendments in lieu of those amendments be agreed to, and a schedule of alternative amendments has been distributed to the Council.

The Hon. I. GILFILLAN: The situation is clear. There is a schedule of amendments which have been assessed by the Government, and they have come back to us from the House of Assembly in the form that the Attorney has just outlined. The Government has indicated that it is not prepared to accept any of the amendments that would allow certified industrial agreements without the union being a party to the agreement. It was by my choice that I had an opportunity to speak with the adviser to the Government to—

An honourable member interjecting:

The Hon. I. GILFILLAN: I do not know about luck coming into it, quite frankly. I discussed with them the. options which could be acceptable. The amendments to which the Attorney has alluded include the extension of the certified agreement to cover workplaces where a proportion is non-unionised; a multiplicity of unions can then be covered by one union. In fact, as the Attorney moves the amendment, I am expecting that he, through his adviser, will no doubt go into more detail to explain it.

I want to make two things plain under the circumstances that confront us. First, I continue to be extremely annoyed that the Government has persisted in refusing to accept a certified industrial agreement in a workplace where there is non-unionised labour. I think all members will accept that extreme efforts were made to ensure that those agreements would be fair and that they would be supervised. I do not want to go over that again. I think there has been quite unacceptable pressure put on the Government, which has buckled and really let down the areas of the workplace where there should be the scope for certified industrial agreements. It may be giving the Opposition great pleasure—although members opposite have not said so yet, but I assume they will in due course. Why not make a stand and go to the wall on it? Why not lose the whole possibility of certified industrial agreements? Why not let that go completely?

Members interjecting:

The CHAIRMAN: Order! The Committee will come to order. The Hon. Mr Gilfillan.

The Hon. I. GILFILLAN: The Hon. Legh Davis is not listening very well at this hour of the morning. Obviously, he is more prepared to talk than to listen. I said that the loss of certified industrial agreements from the Bill is the other option.

Do Opposition members want to be responsible for taking away from many of their colleagues and members of the Liberal Party who have unionised work force the ability to have certified industrial agreements? Those people want the Bill passed so they can get on with it. Do Opposition members want to be responsible for saying that is not possible because they cannot push the Government the whole way they want it to go? Will they spit the dummy so that no-one can have certified industrial agreements in South Australia? I do not believe that Liberal members would be able to hold up their head with that argument because I do not believe that their colleagues and supporters would want them to do that.

As far as I am concerned, this is far from the best procedure. What I wanted in the Bill was what went through this Chamber earlier. That was the best solution, to my mind. However, the measure will not be passed by the Parliament of South Australia in that form so the procedure which has resulted from this process and which has been moved by the Attorney-General is the best that we can achieve in the current political and industrial climate.

The Hon. K.T. GRIFFIN: In the short time that I have had (the past five minutes) to work out what has been happening—

The Hon. C.J. Sumner: Do you want more time?

The Hon. K.T. GRIFFIN: No, the deal is done so I might as well speak on what I understand to be the position and we can get it out of the way. Having spent four hours hanging around trying to work out who was doing deals about what, we now find that we have a deal that capitulates to Trades Hall in relation to certified industrial agreements. The Hon. Mr Gilfillan tried to read my mind and that of the Liberal Party and say that we would not have been popular with our friends and supporters if we lost the whole concept of certified industrial agreements. If anyone had cared to ask us, we were prepared to let the thing fail, to let the whole Bill fall, rather than accept this unionised certified industrial agreement concept.

The Hon. C.J. Sumner: Is that what you would prefer?

The Hon. K.T. GRIFFIN: We would have preferred to lose the Bill because, overall, there was nothing of great significance in it. It put in some standards about family leave, and it had provisions that were much more onerous for harsh and unconscionable contracts, which we resisted. We got a couple of other things out of it with the extension of the definition of employees and we got out of it the extension of the definition of outworkers. However, all the other stuff we got was not particularly significant in the scheme of things. If there had been a conference, we would have taken this view rather than capitulate as the Hon. Mr Gilfillan has done. We would have been prepared to lose the whole Bill.

What we believe, and believe very strongly, is that, if there are to be industrial agreements, it should not be necessary to have any union involvement if the parties do not want that involvement. I made that point clear when

we debated the big brother clause moved by the Hon. Mr Gilfillan that the UTLC should have an involvement if no registered association was party to an agreement. If a small employer with a small work force of non-unionised labour wanted to make an agreement, the big brother, the UTLC, should be given a reasonable opportunity to talk to the parties. That would have effectively stymied most of it, anyway.

We have a very strong view that employers and employees ought to be able to negotiate without the heavy hand of Trades Hall involved. There were adequate protections in the Bill. They were moved by the Hon. Mr Gilfillan and I indicated support for them. The commission had to be satisfied as to certain basic criteria which had to be met before an agreement could be approved.

In some respects, that is a concession by us to the power of the Industrial Commission, but in the context of this Bill we were happy to do that. Now it appears that there cannot be an agreement unless at least one of the parties is a registered association. It is no good for all the small businesses around South Australia who are desperate to have an agreement with their employees, who are happy to talk to their employees and whose employees are happy to talk to them if they cannot get a binding agreement. They cannot get a binding agreement because there is no provision for it under certified agreement procedures, as a union must be involved. A union had to be involved under the Government's original proposition in the Bill; that now is required because the Hon. Mr Gilfillan has sold out to the union movement.

The Hon. R.I. LUCAS: There are established procedures in this Parliament for resolving conflict between the two Houses. There are long established procedures of conferences of managers which enable all parties to put their points of view in an endeavour to resolve the conflict between the two Houses. The Hon. Mr Gilfillan has been in this Council long enough to understand those established procedures.

The Hon. M.J. Elliott interjecting:

The Hon. R.I. LUCAS: Don't talk about doing deals. You have been caught out. The two of you, the dynamic Democrat duo, have sold out.

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

The Hon. R.I. LUCAS: Three or four hours ago they stood in this Chamber and piously and sanctimoniously delivered their views on a range of issues. Then, three or four hours later, they sat in corridors and back rooms with Government advisers, the Minister and anyone else other than the Liberal Party doing their deals without—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: I didn't say you; I said with Government Ministers. I accept that you were not there.

The Hon. Diana Laidlaw: He doesn't want to be part of it.

The Hon. R.I. LUCAS: Exactly. The Attorney-General makes quite clear that he does not want to be part of this, because he understands the established procedures of the Parliament to try to resolve these sorts of conflicts. The Democrats again sold out within the space of three or four hours—

Members interjecting:

The CHAIRMAN: Order! There is too much audible conversation in the Chamber.

The Hon. R.I. LUCAS: —on the attitudes and decisions that they put in this Council only last evening. The Government knows that on the last night of the session, if it keeps the Hon. Mr Gilfillan sitting long enough, because he is keen to go home early and does not want to go to a conference of managers of the Houses—

An honourable member: The Cinderella kids.

The Hon. R.I. LUCAS: They call them the Cinderella kids, because they normally go home at 12 o'clock. They are kind enough to stay here until 2.30 this morning.

The Hon. T.G. Roberts: That is a slur.

The Hon. R.I. LUCAS: Well, if it is a slur, so be it. The Government knows that, if it keeps the Hon. Mr Gilfillan here for long enough, as he does not want to go to a conference of managers to try to resolve the matter with due process, he will fold up in a back room somewhere, do a deal with the Government's advisers and change his position on any particular issue at any particular time.

The Hon. Diana Laidlaw: And he calls himself a Democrat.

The Hon. R.I. LUCAS: The two of them call themselves Democrats. Even if the Hon. Mr Gilfillan decided that he did not want to follow the established processes of this Parliament, that he wanted to sit in a cosy back room with the Hon. Mfr Gregory and others to do this deal, the very least he could do, as an act of courtesy to the Liberal Party and the Hon. Mr Griffin, who sat here for hours going through this issue with him last evening, having gone out of one room before he actually signed his deal in blood or whatever it was that he did to get this deal through, would be at least to have the courtesy to discuss the matter with the Hon. Mr Griffin or with representatives of the Liberal Party. But was the Hon. Mr Gilfillan prepared to undertake that simple act of courtesy before he waltzed into this Chamber? He had to be goaded into standing up to explain aspects of his amendment to members in this Chamber. As the Hon. Mr Griffin has indicated, he had only five minutes in which to read, understand and appreciate—

The Hon. C.J. Sumner: We'll give him longer.

The Hon. R.I. LUCAS: It does not matter if you give him longer: 11 beats 10, as the Hon. Frank Blevins said eloquently to the State Council of the Labor Party. We know where the numbers are, and the deal has been done between the Democrats—

The Hon. C.J. Sumner: Why are you so upset?

The Hon. R.I. LUCAS: Because, as you know, although you sought to distance yourself from the deal, there are established procedures for resolving conflicts between the Houses.

If the Hon. Mr Gilfillan had had the courtesy to at least talk to someone from the Liberal Party he might have been informed that the Government and the Government advisers in the other House were not prepared to sit tomorrow. There is no way (using some colourful language that a senior Government Minister has been using in the past 12 hours) that the Government was prepared to come back and sit tomorrow in relation to this issue.

The Hon. Mr Gilfillan also could have been told there were a number of members in this Chamber and in another Chamber who would not have let this Bill fail because of specific provisions that they hold dear in this legislation. But the Hon. Mr Gilfillan is not even prepared to talk to members in this Chamber or to appreciate or understand the tactical position of the Government or of the advisers in relation to the legislation. Mr Gilfillan went eye to eye or eyeball to eyeball with the Hon. Mr Gregory, and Mr Gilfillan blinked because he wanted to go home and have a snooze.

Members interjecting:

The Hon. R.I. LUCAS: Those are the facts of the case, Mr Chairman.

The CHAIRMAN: Order!

Members interjecting:

The CHAIRMAN: Order!

The Hon. R.I. LUCAS: The Government would not have let this Bill fail and the Government—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: You can call the Hon. Mr Gilfillan Blinky Bill if you want to. The Government did not want to come back and sit tomorrow: it was not going to come back and sit tomorrow in relation to this Bill or any other Bill. So, it had to resolve the issue tonight, and the Hon. Mr Gilfillan did not have the wit or wisdom to appreciate the fact that that was the Government's position. If he had given the Liberal Party the courtesy of having discussions with the Hon. Mr Griffin or indeed anybody other member of the Liberal Party, he would have found out that that was the position of the Government. If he had been prepared to have discussions with the Liberal Party, whether it be in the rooms out the back or in the formal processes—

Members interjecting:

The CHAIRMAN: Order! The Committee will come to order.

The Hon. R.I. LUCAS: —as established by this Parliament to try to resolve conflict between the Houses—processes that the Attorney-General well appreciates and understands—we would have been able achieve much more in relation to this legislation. Instead of the Hon. Mr Gilfillan blinking and going away it would have been the Government.

The Hon. I. GILFILLAN: It is appropriate to clarify a couple of erroneous conclusions that the Leader of the Opposition has leapt to very vociferously. I do not believe for a moment that the Bill itself was at risk and I did not say so. One aspect of the Bill would have failed if we had persisted with the amendments that I wanted to see in the Bill, and they were the clauses dealing with consent industrial agreements, which are the best vehicle for enterprise bargaining. It is the flagship of the conservative forces in Australia, thrusting towards a more productive workplace. By losing certified industrial agreements from this Bill on, I gather, the encouragement of the Liberals in this place, we would have denied employers and employees in South Australia, for some time at least, the opportunity to have them. That was too high a price to pay.

The Hon. R.I. Lucas interjecting:

The CHAIRMAN: Order!

The Hon. I. GILFILLAN: The other area in which the Leader of the Opposition believes me to be horrendously guilty is ignoring the due process of this place.

The Hon. R.I. Lucas interjecting:

The CHAIRMAN: Order!

The Hon. I. GILFILLAN: I suggest that the Leader read Standing Orders and find out that the procedures we are going through are laid down very clearly and simply and are totally in order. If the Opposition is unhappy with the amendment, which very few of us have actually had a lot of time to study, then it is fully appropriate—

Members interjecting:

The CHAIRMAN: Order!

The Hon. I. GILFILLAN: —instead of shouting, yahooing and carrying on as if the only thing they are here for is to attempt to embarrass the Democrats, they could design their own amendment. On the other hand, they can also vote against the proposal from the Attorney on what to do with the schedule of amendments from the House of Assembly. They are not locked into position by two (as they say) rather insignificant Democrats: they are a force in their own right. Have we intimidated the Liberals to the point where they are now totally overwhelmed?

Members interjecting:

The CHAIRMAN: Order! The Committee will come to order.

The Hon. I. GILFILLAN: I do not thank they like to hear the truth. There are two things that prompt the Liberals to be particularly noisy. One is if they think they will be able to score a point off the Democrats, and the other is if they hear a truth which they find uncomfortable; both prompt them to a lot of noise.

The third point is that I had no discussions with the Minister, Bob Gregory, at all; I did no deals with anybody in this place. I sought advice from Parliamentary Counsel—

The Hon. Diana Laidlaw interjecting:

The Hon. I. GILFILLAN: Would you care to listen?

The Hon. Diana Laidlaw interjecting:

The CHAIRMAN: Order!

The Hon. I. GILFILLAN: I took advice from three people—Parliamentary Counsel, Mr Les Wright and Mr Peter Hampton, representing the Employers Federation.

The Hon. L.H. Davis: Did you have a meeting with him?

The Hon. I. GILFILLAN: I had no discussions—

The CHAIRMAN: Order! The Hon. Mr Davis will come to order.

The Hon. I. GILFILLAN: The shouted interjection, inane as usual, was, 'Was he in the meeting with me?' I am just explaining, if people will listen instead of shouting, that those were the people involved in the consultations I had. I had no meetings with any Government member—not one. There was no trade-off—not one. When people go back and review *Hansard,* they will realise that the biggest contribution to the debate made by the Liberals to date has been wrong, noisy and a blatant attempt to discomfit the Democrats. I do not feel in the least discomfited, because at the end of the day I will have made quite plain that I condemn the attitude of the Government, bullied by the unions, not to accept the very reasonable proposal—

Members interjecting:

The CHAIRMAN: Order! The Committee will come to order. The Hon. Mr Gilfillan.

The Hon. I. GILFILLAN: I thought they would like that truth, but apparently they do not. I condemn the Government for that but now, having made the decision, I would ask the Liberals to consult their electorate: consult the people who do the employing and who have the industry and the businesses in South Australia. They should consult them tomorrow and say, 'Do you want to have the scope for enterprise bargaining? Do you want enterprise bargaining introduced in South Australia, yes or no?' I would tell these people here, who do not want to hear the truth—

Members interjecting:

The CHAIRMAN: Order! The Hon. Mr Lucas will come to order.

The Hon. I. GILFILLAN: —that they would have the overwhelming answer, 'Yes, we do want it.' They would say, 'But the Government will not allow enterprise bargaining through certified industrial agreements for workplaces where there are no unions,' and the majority of employers who have substantial union representation in the workplaces would say to these people here, 'What is that to us?' To these people who are more intent on baying insults than listening to good sense, they would say, 'What right do you have deprive us of productive enterprise bargaining?'

Members interjecting:

The CHAIRMAN: Order! The Hon. Mr Lucas will come to order.

The Hon. I. GILFILLAN: It just proves the point. Apparently, after 2 a.m. the Leader of the Opposition is incapable of listening or articulating sense.

The Hon. Anne Levy interjecting:

The CHAIRMAN: Order!

The Hon. I. GILFILLAN: That is not fair, Minister.

He does, on occasion; if you catch him early in the afternoon he does occasionally speak some sense. I believe that the situation which comes through from the process of the recommendations of the Attorney, to which no doubt he will address his mind and speak later, will be to the advantage of South Australia. The main substance of that Bill is not at risk and never was at risk, but if we had pursued the line that the Liberals have stridently insisted that as a matter of principle we should stick to—

Members interjecting:

The Hon. I. GILFILLAN: They can do it, because they know that the Democrats hold the balance of responsibility.

Members interjecting:

The CHAIRMAN: Order!

The Hon. I. GILFILLAN: We will see, when the news of this legislation filters out to the public of South Australia, how many letters of strident protest I get.

Members interjecting:

The CHAIRMAN: Order!

The Hon. I. GILFILLAN: How many letters of strident protest will I get from the employers of South Australia saying, 'You have sold us down the drain'? Very few. But if we lost through the unthinking, impetuous gesture of the Liberals—that we would be put at risk and go to the wall—

Members interjecting:

The CHAIRMAN: Order! Everybody will have the opportunity to enter the debate. The Committee will come to order. The Hon. Mr Gilfillan.

The Hon. I. GILFILLAN: Do not throw him out, Mr Chairman, he might go home to bed. Let him stay the whole time, please. The risk of losing that certified industrial agreement is too high a price to pay for those of us who care about industrial productivity in South Australia. I believe that the arrangements proposed by the Attorney-General are the best that we can get for South Australia at this time.

The Hon. T. CROTHERS: I was not going to make a contribution but whilst I am on my feet I might say that I have been pondering why the Opposition should get upset in such a fashion over what is, after all, as they have described, such a very little thing. And then, when the Hon. Mr Griffin was making a contribution, I made the big find. I found out really what they were all about. What is irking them so much is contained there for all to read in tomorrow's *Hansard* and what Mr Griffin had to say when he was addressing himself to the Bill.

When it was pointed out to him by way of interjection that all of those people he talked about were in general terms covered by awards of the State court and commission he said, 'What about the employers who want to negotiate the small businesses—that want to negotiate on their own with employees?' Why would they need to negotiate on their own? There is but one reason: those of you who have any knowledge of industrial relations will know it is not to pay extra money; they can do that any old time. It is not to do anything other than to cut the costs contained in the ordinary awards. That is what it is all about.

Members interjecting:

The CHAIRMAN: Order! The Committee will come to order.

The Hon. T. CROTHERS: That is what it is all about. I do not need much protection, Mr Chairman.

The Hon. L.H. Davis interjecting:

The CHAIRMAN: Order! The Hon. Mr Davis will come to order.

The Hon. T. CROTHERS: That is what it is all about. I do not have too much to say but I hope—

The Hon. Diana Laidlaw: You are out of your time.

The Hon. T. CROTHERS: I am not out of my time. My time is yet to come, but when—

Members interjecting:

The CHAIRMAN: Order! The Committee will come to order.

The Hon. T. CROTHERS: When you know the subject matter as thoroughly as I know industrial relations, we will give you your head, but in the meantime the best advice I can give you is to be silent and learn. Mr Chairman, that is what it was all about. It was all about undercutting. That is why those agreements were so important. It was all about giving the employer the ability to cut the wages feet out from under the present system of awards.

The Hon. Diana Laidlaw: You can't do it.

The Hon. T. CROTHERS: Yes you can. You know you can, and I do, too.

Members interjecting:

The Hon. T. CROTHERS: I hope that you will be a bit more awake. Never mind going to sleep. If you were a bit more awake—

Members interjecting:

The CHAIRMAN: Order! The Committee will come to order. The Chair has been very tolerant. It is late, it is the last Bill we have to deal with and I ask the Committee to come to order and get on with the business. The Hon. Mr Crothers.

The Hon. T. CROTHERS: In conclusion, I want to say one thing about the Hon. Mr Gilfillan. I hope that when the *Advertiser* runs its headline on this story tomorrow, or whenever, it will reflect the truth of what has happened in this debate. I suggest to the *Advertiser* that the headline ought to be, 'Democrats assist Government in foiling and stopping the Liberals in the South Australian Upper House in a nefarious and clandestine attempt to reduce South Australian workers' wages.' That is what it was all about. You have failed, and you will fail more with the loss of support that that will cost you. I hope it gets out because that is what it was all about.

Members interjecting:

The CHAIRMAN: Order! The Committee will come to order.

The Hon. T. CROTHERS: That is what it is all about. Do not worry about that. You have failed dismally, miserably, absolutely and utterly. The Hon. Mr Gilfillan has nothing to be ashamed about tonight. The only thing I can suggest is that it might make you think in future before reaching out and trying to touch fingertips with that mob of curs over there.

The Hon. K.T. GRIFFIN: I will not take up the last remark of the Hon. Mr Crothers being unparliamentary, because I do not think he really understood what he was saying. It is not all about reducing wages; it is enabling employers and employees to negotiate.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: A safety net is already provided in the amendments which were moved by the Hon. Mr Gilfillan and which we supported. There is already a safety net there and the Industrial Commission had wide authority to determine whether or not an agreement should be certified. The real question is: will there be any jobs left in South Australia in relation to which people can negotiate any sort of agreement, let alone the sort of agreement that the Government has now provided for in this Bill? I suggest that under the present regime in South Australia and in Canberra there will be fewer and fewer jobs and South Australia will become less and less prosperous. The real opportunity and challenge for a Government is to ensure that there are more jobs and that there is more flexibility so that employers and employees can work together to make this a better place than it is at present.

There is no doubt that the Hon. Mr Gilfillan has capitulated to the pressure that was brought to bear upon him. It does not matter that he did not talk to a Minister; he talked to a Minister's adviser and that adviser has been offering advice and support to the Government throughout the whole of the discussion on this issue in both Houses. It is typical of the Hon. Mr Gilfillan and the Hon. Mr Elliott to stand up and be counted in the debate on the legislation and finally, when the pressure is brought to bear, to capitulate. Of course, they hope that no-one will recognise that they have capitulated, but that is what they have done on this issue. They could not stand the heat and they backed off. All they had to do was stand firm.

The Hon. Mr Gilfillan says that I and the Liberals ought to listen to our electorates. We do listen to our electorates. Some 70 per cent of jobs in South Australia are provided by small business, and the small business community wants the flexibility that the amendments originally passed by the Legislative Council would have given in relation to enterprise bargaining. There may have been a few big employers in the industrial relations club who wanted a cosy relationship that would enable them to enter into certified industrial agreements with the unions with which they deal every day of the week, but that is not the bulk of South Australian employers or employees. The fact is that South Australia could well live without this Bill, even if it had been in the form that the Hon. Mr Gilfillan suggested we might have ended up with, and that is with no provision for certified industrial agreements. So, I reject the assertions which he has made. I will certainly take the opportunity to divide on the relevant provision of the motions which are being moved by the Attorney-General.

The Council insisted on its amendments Nos 1 to 6, 10 to 14, 27, 28, 30 and 31.

The Committee divided on the question that the Council did not insist on its amendments Nos. 7 to 9, 15 to 26 and 29:

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

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

Question thus carried.

The Council agreed to the alternative amendments in lieu of amendments Nos 19, 20, 21 and 23.

SITTINGS AND BUSINESS

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

That the Council at its rising adjourn until Tuesday 9 February.

In moving that we adjourn until the new year, 9 February, I would take the opportunity of thanking members for their contributions during this pre-Christmas budget session. It seems in the nature of this business that there is always one Bill at the end of the session which means that we have a late night or, if not a late night, one that at least causes us some difficulties.

For some reason (perhaps it reflects the nature of our two Parties), apart from the last occasion when it was a social issue relating to casinos, these Bills generally seem to be those involving workers compensation or industrial matters.

It seems that the Parties are able to find their way through other issues, albeit with some compromises but without the same difficulty that confronts the Parliament

when dealing with industrial matters. I guess that that reflects the different approach that the two parties have to those issues, on which I will not expound at the moment. Nevertheless, for some reason they do always seem to be left to the last minute; I do not quite understand why, because it also means that members who want to speak on these Bills must restrain themselves for fear of prolonging the debate, and that is a pity. However, I guess it happens because there are always negotiations on these Bills that go on and on and, eventually, we get to debate them only at the last minute. However, that has happened again on this occasion. Let us hope that the other place deals with them expeditiously or we might well be here competing with the conclusion of the last session, which saw us leaving at 7.30 in the morning.

I should like to thank members for their cooperation in dealing with the business. We have dealt with all that could be expected to have been dealt with, with one or two exceptions. I accept that the Opposition normally wants more than two or three hours' notice to deal with ills, even though—

The Hon. Diana Laidlaw: It is not unreasonable.

The Hon. C.J. SUMNER: Absolutely! I am agreeing with you. There is no need to interject when you are getting a speech in your favour—even though some members in the other place, at least, seem to feel that these matters can be dealt with much more quickly than we think is possible. I accept that more than two or three hours' notice is generally necessary for the Legislative Council to deal with Bills that come from the House of Assembly unless prior arrangements are made. That has not always happened, although I note that it did happen with a couple of Bills this evening. I am pleased that the Opposition was prepared to deal with the Wine Grapes Industry (Indicative Prices) Amendment Bill, which arrived only this morning.

I thank members for their cooperation during the session. We have had a reasonably productive parliamentary period, and next year there is a number of very important Bills which are already on the Notice paper which deserve our attention. I thank all the staff and others who assist in the parliament and ensure that we get through our work as best we can. It is not their fault if there are delays: it is almost inevitably our fault if there are problems, and once again I should like to thank them for their assistance and to take the opportunity of wishing everyone the compliments of the coming season and a happy new year.

The Hon. R.I. LUCAS (Leader of the Opposition): I support the motion. First, I should like to thank the Australian Democrats very warmly for their cooperation through the session. I thank the Government, the Attorney-General and the Whip for the cordial relations that generally have ensued during this parliamentary session. Sometimes our colleagues in another place wonder at the procedures of the Upper House and the way in which we seem to organise ourselves, but credit is due to the two Whips (the Hon. Ron Roberts and the Hon. Bob Ritson) for the smooth way we generally manage to organise the business and the operations of the day. Certainly, the pairing arrangements are generally carried out with harmony, cohesion and agreement. It is important support to the efficient operation of the Legislative Council. I was a bit disappointed that you, Mr President, were not prepared to throw me out earlier so that I could have an early night. I cannot reveal our strategy for the next session because we keep these sorts of things to ourselves, but the option of a no-confidence motion in the president may well be on the Liberal party's agenda. I can neither confirm nor deny that at this stage.

The Hon. R.J. Ritson interjecting:

The Hon, R.I. LUCAS: I have a few dissidents on my back bench already, so the Hon. Dr Ritson tells me. We thank you, President, for the good humour and grace with which you conduct the proceedings of the parliament. Certainly, the operations of the Council are much better for your presidency and for the way in which you preside over the Chamber, as I said, with good grace, good humour and, on occasions, an element of flexibility that is essential for any Chamber where you have three Parties.

I support the comments of the Attorney-General in thanking the table staff and all the other staff that make for the efficient operation of parliament. I thank the representative of the *Advertiser* sitting in the press gallery at the moment. I feel quite confident that the Liberal party slant on the proceedings of the Council tonight will hold sway. I must say that it has been an unusual evening in that we had a very important Bill, the Industrial Relations (Miscellaneous Provisions) Amendment Bill and I cannot recall actually seeing a representative of the media in the Chamber this evening. So we may need to explore the nether regions of parliament House to catch up with them.

The Hon. C.J. Sumner: Rupert doesn't pay overtime.

The Hon. R.I. LUCAS: I genuinely do thank the Attorney-General and the Hon. Mr Gilfillan as the respective Leaders for making the operation of the Council a pretty good one for the session, and wish the compliments of the season to all members and staff and we look forward to the February session.

The Hon. I. GILFILLAN: I think I exhausted my supply of effusive praise yesterday on the Chairperson of the Social Development Committee.

The Hon. M.J. Elliott interjecting:

The Hon. I. GILFILLAN: Yes, my colleague felt I was extravagant. However, in hindsight and on reflection I do not think I was. I only missed the opportunity to indicate how we actually coached her and helped her reach the heights of excellent chairing that she eventually came to achieve—but it was a stormy path and it took a while to get there. I am not going to risk the accusation of gratuitous praise. So I simply say, Mr president, that it has been barely tolerable to spend time with this lot through the course of this last session! I am mightily relieved that it has nearly come to an end. I share with the previous speakers who have thanked you, Mr president, for your supervision in presiding over the Chamber. I think it has done a lot to help it be in as good a frame of mind as a productive House of parliament, and thanks to all the supporting staff for the services they have given to us.

The PRESIDENT: I would like to extend my thanks, especially to the Clerk who is new in the job. I also wish

Clive all the best. He served the Parliament well for over 30 years and I made mention of that earlier. I also thank the Black Rod, who has filled in admirably in the position since we have had the change. I would also like to thank all the members from the three Parties. I feel it is to their credit, and mine perhaps, that I have never seen fit to throw anyone out. While there has been a lot of debate across the Chamber I have never detected—not in this session, anyway, I don't think—any real malice in anybody. I think that is what I look for. If I thought there was the slightest bit of real malice I would have no hesitation at all in naming a person.

The Hon. Barbara Wiese: Where were you in the early part of the session?

The PRESIDENT: Well, there was none in the latter part of the session. I think it is to the credit of members that no-one has been thrown out, but maybe they should have been at different times. Parliament should work cooperatively between the Parties, and it has done that very well. It has been a trying year to the extent that the committee system has been set up and we have had to find new staff and new buildings to house those Committees. A bit of adjustment has had to be made. The Joint Parliamentary Service Committee, of which I am a member, along with other members, spends a lot of time and dedication trying to keep Parliament working. *Hansard,* the catering staff and the library have all contributed to Parliament, and they all have their problems.

We can look at Parliament as a factory with about 200 workers, and I think that it is a very productive factory. For the number of staff who work here and the different things we tackle, we get through very well industrially and with good humour. I thank everyone for their effort this year and I hope that, after the Christmas break we come back refreshed. In the new year, I look forward to seeing everyone with their batteries charged.

Motion carried.

PUBLIC FINANCE AND AUDIT (MISCELLANEOUS) AMENDMENT BILL

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

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

The Bill seeks to amend the Public Finance and Audit Act in a number of areas and also to make related amendments to the Government Financing Authority Act.

In broad terms, the various amendments could be described as having four main purposes.

First, the Bill addresses a number of largely-technical shortcomings in Part II of the Act (entitled 'Public Finance'), which have come to notice since the Act came into operation in 1987. The background to the various proposed amendments is as follows:

- Section 8 (5) requires that any surplus in a special deposit account at the end of a financial year be transferred to Consolidated Account unless the Treasurer otherwise directs. In the future, many of these accounts will be used to conduct the financial operations of government departments. As part of these arrangements, any surplus in the account at the end of a financial year is to be retained by the department. The remaining accounts are used for specific activities and generally speaking do not accumulate surpluses. Any balance standing to the credit of such an account at the end of the financial year is required to meet expenditure in the early part of the next financial year.
  It is proposed that the subsection be amended to provide authority for the Treasurer to direct at any time that a cash surplus built up in a special deposit account be paid into Consolidated Account. Treasury will monitor the accounts and discuss the matter with the department if it becomes apparent that unexpected surpluses are building up in an account.
- Section 8 (7) provides for the Treasurer to declare by notice in the Gazette a purpose of a government department to be one which is to be carried out through a special deposit account and to vary or revoke a previous declaration. The practice of gazetting each purpose and each change in the purpose of an account is cumbersome and inefficient and the Bill provides for its abandonment. The purpose of each account will continue to be approved by the Treasurer and the approved purpose for each account will continue to be published in the Treasurer's Statements each year.
- Section 9 covers the operation of imprest accounts. Section 9 (3) (a) provides that money standing to the credit of an imprest account may be used for one or more of the purposes of a government department. Section 9 (4) provides that money expended from an imprest account must be recouped to the same account from money appropriated for the same purpose. The current wording restricts the use of imprest accounts to activities funded by appropriation from Consolidated Account. In practice, imprest accounts are also used to meet urgent expenses associated with other accounts with subsequent reimbursement from those accounts. It is proposed that the Act be amended to facilitate this procedure.
- Section 15 empowers the Treasurer to appropriate funds to cover wage and salary increases resulting from a decision of a relevant tribunal. Current practice is for increases in allowances such as travelling and meal allowances to be excluded from salary and wage certificates issued under this section. It is proposed that the Section be amended to cover allowances payable to employees under an award where these are varied by a wage fixing authority. Allowances of an administrative nature which are not included in an award would not be covered under Section 15.
- Section 16 (3) restricts the Treasurer's power to borrow by way of overdraft to a limit prescribed by an annual Appropriation Act. To provide for more frequent adjustments to the overdraft limit, it is proposed that this section be amended to allow the limit to be prescribed in Supply Acts as well as annual Appropriation Acts. Parliamentary approval would still be required for any change in the overdraft limit.
- Section 22 relates to the Treasurer's financial statements. Section 22 (a) (v) provides for a statement on special deposit accounts at the end of the financial year. In many cases, these accounts are used as clearing accounts for stores and similar operations and for accounting adjustments. Therefore, reporting the value of the debits and the value of the credits during a year conveys no useful information to the readers of the statement. It is proposed to amend the section to abolish the requirement to provide these figures. Where agencies conduct all or a large part of their operations through a special deposit account, the details are reported in their annual financial statements, which are published in both the agency's annual report and the Auditor-General's annual report.

Second, and also in respect of Part II, the Bill proposes revisions to Division IV, which presently sets down a legislative framework for proclaimed semi government authorities wishing to enter into credit arrangements and which also enables the Treasurer to provide guarantees to semi government authorities. The amendments are designed to:—

- update' the current provisions so that they apply not only to borrowings or similar financial accommodation but also to

the complete range of financial products that have emerged in the financial markets since the division was enacted in 1982; and

- overcome a technical deficiency which currently prevents the Treasurer from providing 'standing' guarantees under this Division to semi government authorities.

Over the last decade, the financial market has evolved at a very rapid pace and there is now a wide range of instruments available to assist market participants in managing their financial affairs and exposures. The so-called 'synthetic' or 'derivative' products market (which incorporates such things as interest rate swaps, options and forward rate agreements) perhaps best reflects the current level of financial market sophistication.

In South Australia, only a relatively small number of semi government authorities either regularly or from time to time utilise these risk management tools—the relevant bodies being SAFA, SAFTL, ETSA, LGFA and the Australian Barley Board. While each of them does so in accordance with the terms of the relevant legislation (eg the statute establishing the authority) and on the basis of legal advice, it is the financial market's concern that, in some instances, the relevant legislation does not explicitly grant the necessary powers to utilise these risk management tools. It is desirable therefore that the provisions of Part II Division IV be expanded to cater expressly for the new market developments. As well as establishing a formal basis for the Treasurer's ongoing approval and control of the South Australian public sector' financial activities, the amendments would also ensure that the financial market is left with no doubt whatsoever as to South Australian authorities' ability to undertake derivative product or other financial transactions, thus providing maximum comfort to market participants in their dealings with those authorities.

The importance of this latter point cannot be overstated. Since a UK court ruling that interest rate swaps undertaken by the Hammersmith and Fulham London Borough Council were not binding upon the Council as the transactions were not authorised under the relevant (non-explicit) legislation, financial market participants have been actively considering the implications for Australian statutory authorities and have been pressing the various States to ensure that their legislation removes any uncertainties that exist with respect to those authorities' powers. As a consequence, a number of States have take legislative action to allay market apprehensions and I believe this Bill will adequately address the concerns from South Australia's perspective.

The proposed amendments to Part II Division IV also revise the guarantee provisions to make it clear that the Treasurer may guarantee a specific obligation, a class of obligations or all obligations of a proclaimed semi government authority. The new provisions are designed to overcome difficulties identified by the Crown Solicitor in relation to the provision of a 'standing' guarantee to an authority under the existing provisions of this Division, namely that:—

- such a standing guarantee would be intended to apply to all contracts (present and future) and there is some doubt whether a guarantee can currently be given under this Division for the benefit of persons not presently existing or ascertainable; and
- the Treasurer is not empowered to give a guarantee which is not referable to a specific contract or class of contracts with ascertainable parties.

These issues are of a technical nature but, again, it is very important to address the matters raised by the Crown Solicitor so as to avoid discomfort amongst market participants dealing with the state's semi government authorities. At present, SAFTL is the only semi government body to which it is intended a 'standing' guarantee in respect of all obligations would apply. Such an arrangement would obviate the need for some quite detailed administrative arrangements that have been put in place to ensure that all of SAFTL's liabilities continue to be guaranteed under the current legislation.

Third, this Bill provides for amendments to the Government Financing Authority Act (the Act which establishes SAFA) to:—

- specify the parameters within which the Treasurer may give his approval under the Government Financing Authority Act;
- provide that a transaction entered into by SAFA shall not be invalidated by virtue of a deficiency of power or a procedural irregularity on SAFA's part; and
- make a consequential amendment to the guarantee provision of the Act.

These proposals dove-tail with the amendments to Part II Division IV discussed above.

Under the new provisions, the Treasurer would be able to give standing approvals to certain of SAFA's activities to overcome the difficulties that would arise in day-to-day dealings should counterparties begin to request evidence of the Treasurer's approval of each individual transaction SAFA enters into. This measure would not extend SAFA's powers; it would simply be a minor administrative improvement. SAFA would continue to comply with the tight control requirements in its Act, including Section 13 which states generally that SAFA 'is in the exercise and performance of its powers and functions, subject to the control and direction of the Treasurer'.

The amendments to ensure the validity, and continued guarantee of, transactions entered into by SAFA, in the event of a deficiency of power or irregularly of procedure of SAFA's part, are consistent with the provisions of the Corporations Law, as they apply to companies, and correspond with changes proposed to Part II Division IV.

Fourth, the Bill proposes a number of amendments to clarify the Auditor-General's powers and/or to make the audit process more effective. the amendments, which affect Part I (in particular, Section 4, entitled 'Interpretation' and Part III (entitled 'Audit') of the principal Act, are designed to:—

- clarify that certain companies incorporated under the Corporations Law may be prescribed under the Act as a 'public authority';
- ensure that the coverage of the Act extends to the Group Asset Management Division ('GAMD') of the State Bank of South Australia, which is responsible for the work-out of the impaired assets of the Bank, and that separate accounts are kept for GAMD;
- extend the definition of 'publicly funded body' to include persons or organisations that carry out functions of public benefit and that have received State grant or loan funds;
- clarify the Auditor-General's powers and reporting obligations with respect to the examination of the accounts of 'publicly funded bodies';
- clarify the Auditor-General's powers in relation to the audit of companies which carry out the functions of a public authority or in which the Crown or a public authority is a sole or majority shareholder;
- improve the procedures that apply where a person objects to answering questions put by the Auditor-General or attempts to frustrate the Auditor-General in carrying out his duties; and
- correct a minor deficiency in the Act so as to enable the Auditor-General to continue his existing practice of including in his Report to Parliament the financial statements of only those public authorities whose financial operations are considered to be material.

in legal terms, GAMD is part of the State Bank. The abovementioned amendment relating to GAMD provides that, in respect of the maintaining of accounts and the audit of accounts by the Auditor-General, GAMD will be treated as a separate public authority. This follows the assumption by the Government of full control of GAMD. as discussed in the Budget Speech 1992-93 and in accordance with the Deed of Acknowledgment between the Treasurer and the State Bank dated August 1992. The amendment will assure the Auditor-General of his authority to audit the accounts of GAMD.

Additionally, the Bill provides for an amendment to Part III to protect the Auditor-General from law suits for professional liability where he audits pursuant to statute. This amendment is consistent with a recommendation of the Public Accounts Committee in its report on Accountability. The Committee has noted that, at present, there are potential risks to the Auditor-General that he may be sued as a result of professional judgement made in the course of the audit of Government commercial enterprises in which the public may invest, where those judgements are made available to the public by means other than the Auditor-General' Report to Parliament. This is relevant to such things as agencies' annual reports.

Clause 1: Short title is formal.

Clause 2: Commencement provides for the commencement of the Bill. The clauses dealing with power to enter into financial arrangements and guaranties have retrospective effect. The

amendments relating to GAMD have retrospective effect to 1 July 1992. The other provisions come into operation on assent.

Clause 3: Amendment of s. 4—Interpretation amends section 4 of the principal Act. Paragraph *(a)* is consequential on the amendment made by paragraph *(b)* which extends the meaning of "public authority" to include a body or person (not necessarily "an authority") as is prescribed. Paragraph *(c)* makes an amendment to the definition of "**public authority**" which is consequential on new subsections (3) and (4). The State Bank is not a public authority within the meaning of this definition because its Act provides for auditing by a person other than the Auditor-General. The amendment ensures that this fact will not affect the GAMD's status as a public authority. Paragraph *(d)* extends the definition of "**publicly funded body**" to include a person. Paragraph *(e)* inserts new subsections (3) and (4).

Clause 4: Amendment of s. 8—Special deposit accounts amends section 8 of the principal Act. New subsection (5) requires any surplus in a special deposit account to be credited to the Consolidated Account at the direction of the Treasurer. New subsection 7 removes the requirement for notice to be published in the *Gazette* when the Treasurer approves a purpose of or relating to, a government department.

Clause 5: Amendment of s. 9—Imprest accounts removes the restriction in section 9(4) that requires money to recoup an imprest account to be taken from money appropriated for the purposes of the government department concerned.

Clause 6: Amendment of s. 15—Appropriation by Treasurer for additional salaries, wages, etc. amends section 15 to allow for appropriation where there has been an increase in allowances payable to employees.

Clause 7: Amendment of s. 16—Power to borrow amends section 16 of the principal Act.

Clause 8: Amendment of heading makes an amendment consequential on clause 9*(a)*.

Clause 9: Amendment of s. 17—Interpretation replaces the definition of "credit arrangement" in section 17 with an expanded definition more suited to present day financial transactions.

Clause 10: Substitution of s. 18 replaces section 18 of the principal Act.

Clause 11: Amendment of s. 19—Guarantees and indemnities amends section 19 of the principal Act. Subsection (1)*(a)* is expanded into paragraphs *(a)* and *(b)* that set out the intention more accurately. New subsections (la), (lb) and (1c) broaden the scope of the power to provide guarantees.

Clause 12: Insertion of s. 20a inserts new section 20a which provides for the validity of transactions of semi-government authorities.

Cause 13: Amendment of s. 22—Treasurer's statements amends section 22 of the principal Act.

Clause 14: Insertion of s. 30a inserts a provision that protects the Auditor-General from liability.

Clause 15: Substitution of s. 32 replaces section 32 with a provision that requires the Auditor-General to examine the efficiency and economy with which a publicly funded body conducts its affairs and requires the Auditor-General to prepare a report for the Treasurer and Parliament.

Clause 16: Amendment of s. 33—Audit of other accounts amends section 33 to cater for the situation where a public authority holds shares in a company.

Clause 17: Amendment of s. 34—Powers of the Auditor-General to obtain information amends section 34 to enable the Auditor-General to apply to the Supreme Court for assistance in enforcing his or her powers under the section.

Clause 18: Amendment of s. 36—Auditor-General's annual report amends section 36 of the principal Act.

Clause 19: Amendment of s. 38—Reports and other documents to be tabled before Parliament makes a consequential amendment to section 38 of the principal Act.

Clause 20: Amendment of Government Financing Authority Act 1982 amends the *Government Financing Authority Act 1982.*

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

INDUSTRIAL RELATIONS (MISCELLANEOUS PROVISIONS) AMENDMENT BILL

The House of Assembly intimated that it did not insist on its disagreement to the Legislative Council's amendments Nos 1 to 6, 10 to 14, 27, 28, 30 and 31 and that it had agreed to the alternative amendments made in lieu of amendments Nos 19, 20, 21 and 23 without amendment.

ADJOURNMENT

At 3.33 a.m. the Council adjourned until Tuesday 9 February 1993 at 2.15 p.m.