LEGISLATIVE COUNCIL

Tuesday 2 March 1993

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

ASSENT TO BILLS

Her Excellency the Governor, by message, intimated her assent to the following Bills:

Statutes Amendment (Chief Inspector),

Workers Rehabilitation and Compensation (Declaration of Validity).

QUESTIONS ON NOTICE

The PRESIDENT: I direct that written answers to the following questions, as detailed in the schedule that I now table, be distributed and printed in *Hansard:* Nos 21, 40 and 41.

MINISTERIAL OFFICERS

21. **The Hon. R.I. LUCAS:**

1. What were the names and classifications of all officers working in the offices of the Minister of Primary Industries as of 13 November 1992?

2. Which officers were ministerial and which officers had tenure and were appointed under the GME Act?

3. What salary and other remuneration was payable for each position?

4. Which positions in the Minister's above office were unfilled as of 13 November 1992 and what were the salaries and other remuneration payable for such positions?

The Hon. BARBARA WIESE: The reply is as follows:

As at 13 November 1992

(1,2,3)

Name/Classification	Ministerial Salary GME Act
ASO6	GME Act44,793
ASO4	GME Act34,850
AS03	GME Act29,008
AS02	GME Act24,908
AS01	GME Act23,165
AS01	GME Act21,742
* AS01	GME Act14,576
** AS03	GME Act34,081
*** PS03	GME Act46,125
M. Nardelli (Media Adviser)	Ministerial44,699 + 15%
G. Portolesi (Ministerial Adviser)	Ministerial44,793 + 15%

* Aboriginal Youth Employment Training Program participant—salary costs to be reimbursed by the Department of Labour.

** Research Assistant (Additional duties allowance)

*** Ministerial Liaison Officer Department of Primary Industries (Agriculture)

(4) As at 13 November 1992 there was one position, AS02—salary range $24 908/26 958

The current Labor Government and the previous Liberal Government adopted the practice of employing a number of personal staff to the Minister on a contract basis. Given the nature of that public employment it is considered appropriate to disclose the name of the person involved and details as to remuneration.

In addition to contract staff, ministerial offices are also serviced by officers employed under the Government Management and Employment Act. These officers are often seconded from departments under the Minister's control and are periodically rotated or otherwise moved into and from positions within the mainstream of Public Service. It is therefore not considered appropriate to identify officers who happen to be located in a ministerial office at a particular point in time.

STATE THEATRE COMPANY

40. **The Hon. DIANA LAIDLAW:**

1. What was the cost of the review of the State Theatre Company undertaken last year by Sydney based arts consultant, Mr Justin MacDonnell?

2. Were tenders called prior to the board awarding the commission to Mr MacDonnell and, if not, why not.

3. Why was it considered appropriate by the board for Mr MacDonnell to stay at the home of the Chairman of the board, Ms Rosemary Wighton, while undertaking his review?

The Hon. ANNE LEVY:

1. The review of the structure and function of the State Theatre Company was commissioned by the Board of Governors of the company, with the view to ensuring that the company could respond more appropriately to the economic climate of the 1990s and generate more income. The cost of employing Mr Justin MacDonnell amounted to $10,000.

2. Tenders were not called for. Mr Justin MacDonnell was selected by the Board after consultation with leading arts administrators in Adelaide, including Mr Len Amadio, Senior Adviser in the Department for the Arts and Cultural Heritage. The Board was in no doubt that Mr MacDonnell was the best person for the job, with his Australia-wide reputation as an arts consultant, his wide experience with performing arts organisations and his former work in South Australia with both State Opera and Flinders University.

3. The invitation for Mr MacDonnell to stay with the Chair of the Board, Ms Rosemary Wighton, was a private matter. This was not considered by the Board.

FESTIVAL CENTRE

41. **The Hon. DIANA LAIDLAW:**

1. What is the total budget for the current review of the Adelaide Festival Centre Trust, including the employment of consultants to prepare a business plan for the centre, being undertaken by a team headed by John Bastian?

2. Is the cost of this review being met by the Department of Arts and Cultural Heritage or from the budget of the Adelaide Festival Centre Trust?

3. Following release of the Bastian Review, will the Minister also release the review of the Trust's operations undertaken last financial year by a team principally comprising departmental officers and, if not, why not?

The Hon. ANNE LEVY:

1. The total budget for the development of the Adelaide Festival Centre Trust Business Plan, including the employment of consultants, is $80 000.

2. The cost of this review is being met by the Department for the Arts and Cultural Heritage.

3. The review of the Festival Centre Trust undertaken last year, which identified the need for the development of a business plan, is a working paper only and it would be appropriate to release it. The business plan which is currently in draft form may not be released due to its 'Commercial in Confidence' nature.

PAPERS TABLED

The following papers were laid on the table:

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

Friendly Societies Act 1919—Lifeplan Community Services —General Laws.

Regulations under the following Acts—

Dangerous Substances Act 1979—Expiation Fees.

Expiation of Offences Act 1987—New Form—Late Payment.

Explosives Act 1936—Expiation Fees.

Summary Procedure Act 1921—Interstate Summary Protection Order.

Superannuation (Benefit Scheme) Act 1992—Members—Exclusions—Fees.

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

Regulations under the following Acts—

Ambulance Services Act 1992—Prescribed Ambulance Services.

Fisheries Act 1982—Rock Lobster.

Motor Vehicles Act 1959—Revocation—Practical Driving Examinations.

Public and Environmental Health Act 1987—Notification of Cytology and Biopsy Results.

South Australian Health Commission Act 1976—Whyalla Hospital—Medical Rehabilitation Service.

Stock Act 1990—Hormone Growth Promotants in Cattle.

Stock Medicines Act 1939—Hormone Growth Promotants in Cattle.

Forestry Act 1950—Proclamation—Mount Burr Forest District—Land ceasing to be Forest Reserve.

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

Regulations under the following Acts—

Beverage Container Act 1975—Beer, Water and Soft Drink.

Education Act 1972—Expiation Fees.

Marine Environment Protection Act 1990—Variation—Interpretation Business.

Rates and Land Tax Remission Act 1986—Variation of Schedule.

Sewerage Act 1929—Connection Fee Increases.

Water Resources Act 1990—Fees.

Waterworks Act 1932—Connection Fee Increases.

District Council of Tumby Bay—By-law No. 40—Council Reserves.

By the Minister of Consumer Affairs (Hon. Anne Levy)—

Regulation under the following Act—

Liquor Licensing Act 1985—Dry Areas—Adelaide.

STATE BANK

The Hon. C.J. SUMNER (Attorney-General): I seek leave to table a ministerial statement from the honourable Treasurer in the other place on the State Bank.

Leave granted.

QUESTION TIME

SCHOOL VIOLENCE

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Attorney-General a question about school violence.

Leave granted.

The Hon. R.I. LUCAS: Last Friday a young female student from a southern suburbs high school was assaulted just outside her school by an ex-student of that school. Yesterday at that school there was further trouble as a result of the same ex-student entering the school grounds and, amongst other things, threatening to kick in the head of one of the students. A parent of one of the threatened students then came to the school and subsequently chased that ex-student into a nearby hairdressing shop, where damage occurred as a result of an attempt to apprehend the ex-student. This parent was then assaulted by a friend of the ex-student, before police arrived. The parent suffered a range of injuries including an injured ankle, as well as having his spectacles broken. This school has had an ongoing problem with ex-students and other young trouble makers continually coming onto school premises and harassing and intimidating students and teachers with verbal and physical abuse.

I am advised that this school has taken the problem to the Children's Court on four separate occasions seeking restraining orders against five individuals to prevent them coming onto school grounds. The school's application was also supported by Darlington police. However, on each occasion the magistrate has refused the request stating that the offences were not frequent enough to justify restraining orders. Parents, teachers and students of the school are furious at a system which allows this situation to continue. One parent has reported to me that some students are so concerned about their own safety at school they refuse to visit the toilet block during school hours. One student was also so worried about his safety that he took a plugged pistol to school as protection. The police have subsequently spoken to that student and warned him against bringing it to school. My questions are as follows:

1. Will the Attorney-General consult with the Director of Public Prosecutions to see whether there is any possibility of an appeal being instituted on this matter?

2. Will the Attorney-General review the operation of restraining orders to see whether any change is required to provide some measure of protection to students and teachers in schools?

The Hon. C.J. SUMNER: The provisions relating to restraining orders were reviewed and dealt with in this Parliament just last year and the honourable member supported the Bill as it passed the Parliament at that time. Whether anything further is required to deal with any problems of students or schools is a matter that I will examine.

As to the first question, I will consult with the relevant authorities (whether that is the DPP or not - probably the police, I suspect) to see whether or not anything can be done about the case to which the honourable member referred. I also wish to say that I am not sure that the information the honourable member has provided to the Council is verified or not, but I will see whether or not that is the case.

STATE BANK

The Hon. K.T. GRIFFIN: My questions to the Attorney-General are as follows:

1. Will the Attorney-General give a commitment that, with the second report of the State Bank royal commission proposed to be delivered to the Governor on Friday this week, the report will be tabled in Parliament next Tuesday?

2. Will the Attorney-General also give a commitment that if there is to be any early release of the report to the media the Opposition will receive copies at the same time, as happened with the first report?

The Hon. C.J. SUMNER: Yes, Mr President.

RAILWAY CROSSINGS

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister of Transport Development a question about safety for pedestrians at railway crossings.

Leave granted.

The Hon. DIANA LAIDLAW: This morning a man aged about 40 was killed when hit by a train at the Woodville Park pedestrian crossing. This horrific accident follows a similar occurrence at Woodville Station on 26 January. In that case the gentleman remains critically injured. I ask the Minister:

1. Will she require the STA as a matter of urgency to review the safety provisions for pedestrians at railway crossings?

2. Recognising that the STA has commenced a program to get rid of subways at railway stations—a program that I support—will she ask the STA to assess the need for and cost of installing safety latch gates at railway crossings? I suggest that such gates would be similar to those that are now required at kindergartens

for entry and exit and also at most playgrounds. I would also like the STA to investigate in respect to the safety gates, whether they could be automatically locked when a train passes or approaches a station or such a crossing, and that locking procedure could take place when a train activates the signals.

The Hon. BARBARA WIESE: After every accident like the very unfortunate one that occurred this morning a full investigation is always undertaken by all appropriate authorities, and obviously the STA is one of the authorities that participates in such an investigation to determine whether the cause of the accident is something that is within the power of the relevant authorities to do something about. In some cases there is action that can be taken; in other cases that is not the case; and in some of those cases it is simply something which is unavoidable by any authority at all, and the responsibility rests with the person concerned.

I am not sure what the cause of this morning's accident is at this stage. The appropriate investigations are still taking place, and I would expect the STA to take appropriate action at that crossing if it is considered that it is possible for such action to be taken or that additional safety measures are required.

I am sure that some of the suggestions that the honourable member made have been investigated on previous occasions, and I think that a number of the options that she put forward would be very expensive to implement. In all these cases an assessment must obviously be made about the benefit to the community that would come from extensive expenditure in these areas. In some cases it is simply a better proposition to try to educate people to be careful when they are crossing railway lines or crossing roads, or whatever the case may be, where there may be danger. In other cases, because of the circumstances, it is desirable to add to the range of safety mechanisms that are already in place.

I will seek a report from the State Transport Authority about the accident that occurred this morning and a report on studies and measures that have been taken in the past and any proposals that they may have for the future for upgrading pedestrian crossings, where those crossings are the responsibility of the State Transport Authority. I must say that in most of these cases not only must there be a balance between the Government authority providing whatever mechanisms are reasonable in the interests of the safety of the public but also we must sound a warning that members of the public must take due care. We cannot always protect people from themselves.

They must be aware that, when they are coming near railway lines, roads or other places where they may face some physical danger, there is a need to be extremely cautious when crossing. As I said, I will seek the reports that I have just outlined and hope that that information will be helpful to the Council.

IMPARJA

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Attorney-General, as Leader of the Government in this Chamber, a question about funding for Imparja TV.

Leave granted.

The Hon. I. GILFILLAN: The future of the Aboriginal owned Imparja television service is being threatened because of the failure of this State Government to uphold a commitment to provide funds. Imparja was established in Alice Springs following an Australian Broadcasting Tribunal licence hearing in 1986 and is the only commercial television service that broadcasts by satellite to more than 190 000 people throughout regional South Australia, the Northern Territory and western New South Wales.

A recent assessment of audience reach indicates that Imparja has been highly successful in its broadcasting targets, with more than 120 000 people tuning in regularly from as far north as Melville Island in the Northern Territory to as far south as Elliston and Wudinna in South Australia.

The majority of Imparja's viewing audience is non-Aboriginal. As an independent business, Imparja has been a profitable operation, but its AUSSAT satellite costs are high (around $2.7 million), requiring the financial support of both Federal and State Governments. At the 1986 licence hearings, South Australia's current Premier (Hon. Lynn Arnold) acted as the State's representative and gave an undertaking that South Australia would contribute substantially to Imparja's satellite costs in conjunction with the Northern Territory and Federal Governments. Canberra has since provided Imparja with $2 million in funding, while the Northern Territory Government has committed $350 000, leaving South Australia to provide the remaining $350 000.

However, the State Government has failed to fulfil its funding obligation to Imparja, leaving the organisation in financial jeopardy and threatening a vital service to almost 200 000 people in regional central Australia.

In addition, the failure by Premier Arnold to honour his original commitment is threatening funds from the Northern Territory Government, which made its allocation contingent on South Australia's meeting its financial obligation. I remind the Council that that undertaking was given nearly seven years ago yet, to date, no money has been forthcoming. My questions to the Attorney are:

1. Is the Government aware of the plight of Imparja and the commitment given to it by the Hon. Mr Arnold in 1986?

2. If so, why has the Government failed to honour its financial commitment to such a vital and successful operation?

3. Would the Attorney as a matter of urgency ensure that the State Government meet with Imparja management with a view to meeting its funding commitment and, if not, why not?

The Hon. C.J. SUMNER: As I recollect, the Government supported the Imparja television station. I am not aware that commitments given by the Government have not been met. However, I will certainly take up that matter with the appropriate Minister and bring back a reply, and also see whether any of the other matters raised by the honourable member require inquiry and let him know.

PRISONERS, DRUGS

The Hon. J.C. IRWIN: I seek leave to make a brief explanation before asking the Attorney-General a question about drugs in prison.

Leave granted.

The Hon. J.C. IRWIN: The Government, through the Department of Correctional Services, continues to make noises about stopping drugs coming freely into the prisons in South Australia and being freely distributed once inside. Tough new measures announced last Friday week could have been practised or instigated years ago but they have not been, either because the Government wants to protect its correctional officers or a drug culture in our prisons is an advantage for prison administration.

We are told by an *Advertiser* article of 20 February that sniffer dogs will be used more for drug detection, even though an *Advertiser* article the day before says that Minister Gregory opposes the use of sniffer dogs to search all visitors to the State's prisons. I quote the Hon. Mr Gregory from the article as follows:

Can you imagine people having an Alsatian sniff them every time they wanted to make a visit? How do you think a three-year-old girl would go? How long would it be before one bit the kid? John Dawes, the Correctional Services Chief Executive Officer, told the *Advertiser* on 20 February that drugs were taken into prisons in the body cavities of visitors.

Does the Attorney-General agree that it is not beyond the wit of prisoners to arrange for family members, including young children, to be used to bring drugs to prisoners? Does he believe prison visitors should be searched to prevent a crime being committed, and if young children are found to have drugs concealed on them, or in body crevices, does he agree that this would be one of the worst forms of child abuse?

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

HEARING DEVICES

The Hon. R.J. RITSON: I seek leave to make a brief explanation before asking the Attorney-General, as Leader of the Government in this place, a question about assistive hearing devices in public venues.

Leave granted.

The Hon. R.J. RITSON: Mr President, this subject touches on so many different portfolios that it is best asked of the Government and it concerns assisted hearing in public places. It appears that the reverberation times of large buildings make life almost impossible for people with hearing aids in public buildings. There is in place a system of audio assistive loops, which are wires inside the building, which actually broadcast the signal direct to the hearing aid.

I have a letter from a constituent—which I will offer to the Government—that explains in detail which facilities have them and which do not. For instance, we are informed that the Festival Theatre has one but it is somewhat outdated and intermittently inactive. The Entertainment Centre does not; the Chelsea Cinema at Kensington does and attendances have increased at that theatre. Parliament House does not have such devices and neither do the courts. The constituent goes on to indicate that about 20 per cent of the population have a hearing difficulty which would benefit from these devices.

I ask the Minister whether the Government would peruse the list and investigate the possibility of either legislating for these devices or at least, as described in the letter, providing them in public buildings on behalf of disabled people who are not at present able to enjoy performances. I falter because I wonder how anyone can enjoy the public gallery. Some people do have an interest in hearing the proceedings of Parliament from the Gallery.

The Hon. Anne Levy interjecting:

The Hon. R.J. RITSON: That is a good point. Certainly it is paradoxical that one may need audio assistance to hear the very music that may have damaged the hearing in the first place but that is no reason why the Government should not look at this problem, particularly in its own buildings, its own Parliament and its own courts. So, I do ask the Minister to consider the matters that are contained in the letter and to bring back a reply to this House.

The Hon. C.J. SUMNER: I will take up those matters with the responsible Ministers and bring back a reply.

STATUTORY AUTHORITIES

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Minister of Public Sector Reform a question about statutory authorities.

Leave granted.

The Hon. L.H. DAVIS: On 26 November 1992—96 days ago, over three months ago, nearly 14 weeks ago—I asked the Minister of Public Sector Reform a question about statutory authorities, to which he has not yet replied. I pointed out that over eight years ago I asked the Attorney-General whether the State Government would consider publishing comprehensive information about statutory authorities, including the date of publication of annual reports and the names of and remuneration paid to members of boards and committees. On 18 September 1984 the Attorney-General said, 'The Government is giving consideration to establishing a system which can provide such consolidated information.' As I said, that was over eight years ago.

I advised the Council that the due date for 1991-92 annual reports was 5 November 1992, but the Department of the Premier and Cabinet had not even reported by that due date, nor had the Attorney-General's Department. I suggested that as many as 50 agencies had not reported at that time even though I had asked the question 20 days after 5 November. In the first two weeks of sitting in this calendar year in this Chamber, eight further 1991-92 annual reports have been tabled more than three months after the due date. I am quite sure that a number of 1991-92 annual reports remain outstanding, but, because of the absence of a comprehensive register of statutory authorities, for which I first asked only 8 1/2 years ago, it is very difficult to establish just what is still outstanding. My questions to the Minister on this most important topic are as follows:

1. Does the Minister of Public Sector Reform accept that 14 weeks for an answer to an important question is totally unsatisfactory?

2. Has the Minister of Public Sector Reform yet asked Ministers of this Government to answer questions asked, wherever possible, within a specified time, and, if not, does he think it would be a good idea?

3. Why has the Government, after eight years, still not made any decision on this important subject given that public companies listed on the Stock Exchange have far more stringent requirements in terms of reporting and reporting by the due date?

4. If I dare ask, when does the Minister of Public Sector Reform anticipate providing answers to this Chamber to the questions that I asked on 26 November last year?

The Hon. C.J. SUMNER: I will check where that answer is. Obviously an answer should have been—

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: I assume I would not have been appointed to the job if there were not some reforming to do. It is obviously desirable that questions be answered earlier than 14 weeks. I will check why this one has not been answered. The question of the review and reform of statutory authorities is one of the issues that is currently before me as Minister and before the Office of Public Sector Reform, and, of course, we are currently debating legislation that is concerned with one aspect of that matter—the Public Corporations Bill. However, I will check where the answer is. The honourable member can expect further statements to be made on these topics at some time in the reasonably near future.

FOOD BANK

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister representing the Minister of Health, Family and Community Services a question relating to a food bank in South Australia.

Leave granted.

The Hon. M.J. ELLIOTT: My question relates to moves in South Australia to establish a food bank. The venture is supported by a large number of agencies and groups as a means of channelling surplus and discarded food towards people in need. It is recognised that stores, such as supermarkets, dump produce which is not selling well, customs impound incorrectly labelled imports, and at certain times of the year gluts of fresh produce lead to good quality food, often fruit, being discarded.

The idea of a food bank is to coordinate the retrieval of food which is still of consumable quality and its use in food parcels or hot dinners for disadvantaged consumers. The idea was raised at a discussion meeting in Adelaide recently which heard a speaker from the Council for Homeless Persons in Victoria. That group has been involved in setting up the Melbourne Food Bank. SACOSS, in its program 'Promoting Healthy Communities', is to facilitate a meeting of a working group with the aim of looking at the proposal. Practical moves such as this aimed at distributing the abundant produce of our society to disadvantaged groups are admirable and deserve support. However, when I read the note about it in a publication recently, I recalled media reports about one individual who collected food discarded by supermarkets and ran foul of the law. My questions to the Minister are:

1. Are there likely to be any legal obstacles to the operation of a food bank in South Australia?

2. If such legal constraints on the redistribution of food exist, will the Government consider altering the law to facilitate the operation of a food bank?

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

ETHNIC AFFAIRS

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Attorney-General, representing the Premier and the Minister of Multicultural and Ethnic Affairs, a question about the appointment of a Chief Executive Officer.

Leave granted.

The Hon. J.F. STEFANI: At the end of January this year, Mr Trevor Barr, the former Chief Executive Officer to the Office of Multicultural and Ethnic Affairs, retired from his position. Mr Barr had served in this position for a number of years and had provided distinguished service to the Office of Multicultural and Ethnic Affairs and to the commission. I am advised that the Arnold Government had been aware of his pending retirement since November last year. A month has already lapsed and his position is still vacant. My questions are:

1. Will the Minister advise when a new Chief Executive Officer is likely to be appointed to this important position?

2. Will the Minister confirm what selection process will be adopted to identify the best possible applicant for this position?

3. Will the Minister give an undertaking that an appropriate consultation process will occur in arriving at a final decision for the appointment?

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

CAMPYLOBACTER

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister representing the Minister of Health and Community Services a question about the notifiable disease, campylobacter.

Leave granted.

The Hon. BERNICE PFITZNER: In the latest notification of diseases for the eastern metropolitan sub-region it was noted that there were nearly 300 cases of an infectious disease known as campylobacter for the year 1992. The suburbs included Adelaide, Burnside, Campbelltown, East Torrens, Kensington, Norwood, Payneham, Prospect, St Peters, Stirling, Unley and Walkerville. This disease is caused by the bacteria campylobacter and is an acute gastro-intestinal infection. The symptoms are diarrhoea, abdominal pains, fever and vomiting. Most cases are self-limiting after a week, but

20 per cent of cases have long term effects of malaise and general ill health. The mode of transmission in South Australia is by eating infected food or contact with infected pets. One of the methods to control this infection should be by excluding symptomatic individuals from food handling, from care of hospitalised patients and from day care centres.

Further, it is also noted that in November 1992 there were 42 cases and in December 1992 there were 30 cases. However, the health authority that was supposed to follow up the cases was only informed of these cases in February of this year—almost three months later. No contact information was supplied for the health authority to further investigate. The new Public and Environmental Health Review Bill that is coming through the House has emphasised and clarified the fact that the South Australian Health Commission has a duty to promote proper standards of public and environmental health, and that the local council or controlling authority has a duty to prevent the occurrence and spread of notifiable disease. My questions to the Minister are:

1. For the local health authority to do its duty in preventing the occurrence and spread of the disease, campylobacter, the authority needs to have early information regarding the person and the location in order to make contact and investigations: why was the information so belated and inadequate and what does the commission expect the local health authority to do at this stage?

2. Is this method of obtaining information and its content similar to that received by other health authorities in metropolitan and country regions?

3. How many cases of campylobacter have been notified in the whole of this State during the past year?

4. Is the commission compiling data as to the epidemiology of campylobacter, and what plans has the commission in hand to help local health authorities to prevent the occurrence and spread of this most debilitating disease?

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

AVIATION SAFETY TAX

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Minister of Transport Development a question about aviation safety tax.

Leave granted.

The Hon. PETER DUNN: It has come to my attention in the past few days via several charter and aircraft maintenance firms that the Federal Government through the Civil Aviation Authority wishes to impose what appear to be rather horrendous taxes on the aviation industry throughout Australia. I am not particularly interested in what happens in other States but I am interested in what happens in this State. The taxes go something like this. If you have a flying school and you wish to retain your licence, the annual fixed rate is for a CAA officer to be paid $110 an hour for 20 hours; for a charter licence, it is four hours at $110 an hour; and for an instructor's course it is 11 hours at $110 an hour. Even worse than that, so that these shops can be inspected by CAA officers in order to write up the regulations and approve the appointment of maintenance engineers to work on the aircraft, the CAA requires $80 an hour for the purpose of inspection and 30 hours of basic maintenance. That is 30 hours at $80 an hour annually to let you have a licence. It goes on and on.

For example, for a relatively small maintenance organisation such as Rossair, $20 000 per year must be paid to the CAA so that it can have a licence to do the things it wants to do; that is, the maintenance of light aircraft. For a much smaller organisation involving one person and the occasional hiring of engineers, the cost is $7 000. On top of that, we already pay 26c per litre to the Federal Government, in effect, to cover this. I fly, on average, about 200 hours a year using about 47 to 50 litres per hour. At 26c a litre, that works out to $2 600. If on top of that I have to pay a further $1 200, $1 400 or $1 500 per year, that makes my operation uneconomical. What would those add-on costs do to small charter organisations servicing Kangaroo Island, Coober Pedy, Port Lincoln, Tumby Bay, Cummins, Cleve, Wudinna, Whyalla or Ceduna? It would totally wreck them, and they would go out of business. I am told that if charter organisations go out of business, airports will close, because local government will not—

The PRESIDENT: Order! The honourable member seems to be debating the issue.

The Hon. PETER DUNN: I am relating what has been told to me. I have been reliably informed that if that happens we will not have aerial evacuation. These costs to be imposed by the Federal Government are quite extreme. Will the Minister make representations to her Federal colleagues on behalf of South Australia urging them not to proceed with this crippling tax?

The Hon. BARBARA WIESE: As the honourable member points out, the charges to which he refers are apparently being imposed by the Civil Aviation Authority which is a Federal Government body, and any representations on this matter are better directed to the responsible Federal Minister. However, I will have the matters he has raised examined, and if I believe there is a good case for raising concerns with my Federal counterpart I will certainly do so on behalf of people within the industry in South Australia. As the honourable member may be aware, from time to time I have raised other issues with my Federal colleagues relating to aviation matters where I have considered that unreasonable charges are being placed upon sectors of the industry. If this is one of those cases, I will be very pleased to take it up with my Federal colleague.

BACTERIAL WILT

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister representing the Minister of Primary Industries a question about bacterial wilt.

Leave granted.

The Hon. R.I. LUCAS: I have been informed that late in 1991—

The Hon. Anne Levy: You have your shadow ministries mixed.

The Hon. R.I. LUCAS: We are all things to all people when in Opposition. I have been informed that late in 1991, a major supplier contracted a number of South Australian potato growers to grow potatoes for its snack foods division to be converted into potato chips. I understand that the seed potatoes provided by this supplier contained bacterial wilt, which subsequently affected all potato growing areas of the State. The problem, however, was that the discovery of the bacterial wilt was not made until April 1992. The disease has severely affected some potato growers, and some are claiming losses as high as $400 000. A key aspect of their claim relates to their obtaining access to a report from the Department of Primary Industries that examined the causes of the outbreak of bacterial wilt. Despite the efforts of the South Australian Farmers Federation and my colleague the member for Victoria to obtain a release of the departmental report, it still remains confidential and one cannot escape the feeling that there is a cover-up on this matter. Will the Minister make available a copy of his department's report into the outbreak of bacterial wilt in potato crops in South Australia and, if not, why not?

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

STATE TRANSPORT AUTHORITY

The Hon. DIANA LAIDLAW: I have a number of questions of the Minister of Transport Development relating to Mr Tom Morgan. Following the resignation in controversial circumstances of Mr Tom Morgan as Secretary of the South Australian Branch of the Australian Tramways and Motor Omnibus Employees Association (ATMOEA), I ask the Minister:

1. Why has the STA employed Mr Morgan as Patronage Systems Officer based at the Adelaide Railway Station?

2. Why did the STA create this position for Mr Morgan and, if the position was deemed necessary, why did the STA not advertise it within the STA or within the Public Service at large?

3. Does the Minister appreciate that Mr Morgan's new job has 'infuriated' bus, tram and train staff who view the appointment as 'jobs for the boys' and a pay-off for services rendered to the STA at the expense of bus and tram employees whom he was paid to represent?

4. What are Mr Morgan's job specification, salary and conditions?

5. Will the Minister advise the additional expense the STA will incur following Mr Morgan's appointment, as I have been told that his salaried position has led to a demand by rail staff at the Adelaide Railway Station for reclassification of their daily paid jobs?

The Hon. BARBARA WIESE: I am not aware of the appointment to which the honourable member refers.

The Hon. Diana Laidlaw: It has been talked about a lot in the STA.

The PRESIDENT: Order!

The Hon. BARBARA WIESE: I will seek a report from the management of the STA about that appointment. My recollection is that before Mr Morgan became a paid trade union official he was an employee of the State Transport Authority. So, I am not sure whether he was on secondment and had the opportunity to return to employment within the State Transport Authority or whether the situation is as the honourable member describes it, namely, that a new position has been offered to him.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: As I indicated, I am not aware of the circumstances. I was not aware of the appointment, and I will seek information about it.

CHILDREN'S COURT

The Hon. K.T. GRIFFIN: I seek leave to make a brief explanation before asking the Attorney-General a question about Children's Court delays.

Leave granted.

The Hon. K.T. GRIFFIN: The report of the Children's Court Advisory Committee which was tabled in Parliament two weeks ago makes the following observations about delays in the juvenile justice system:

> A report on delays in the juvenile justice system was presented to the Attorney-General outlining a clear set of timeframes for every step in the system. The recommendations of the committee were endorsed by the Attorney-General and the ministerial group on crime prevention, leading to the establishment of a working party to oversee the implementation of the time limits. The broad representation of the committee ensured that each key agency has adopted standards that have become the benchmarks for good service and a more accountable juvenile justice system.

My questions to the Attorney-General are:

1. Will he release the clear set of timeframes for every step in the system referred to in the report of the Children's Court Advisory Committee?

2. Can he indicate what standards and benchmarks have been adopted and what is the process of implementation and the timetable, and at the same time can he indicate the periods of delays prior to the implementation of the recommendations?

3. Can he indicate also who is on the working party which has been given responsibility to oversee the implementation of time limits in the Children's Court?

The Hon. C.J. SUMNER: Generally the situation in South Australian courts at the moment is very good. There are few delays in any courts, and I assume that applies to the Children's Court as well. However, I will get answers to—

The Hon. K.T. Griffin: They talk about delays, apparently.

The Hon. C.J. SUMNER: Sure, but that was some 18 months ago. In any event, I will get answers to the questions asked by the honourable member and see what information can be made available to him.

EMBRYOS

The Hon. R.J. RITSON: I seek leave to make a brief explanation before asking the Minister representing the

Minister of Health a question on the subject of international commercialisation of embryos.

Leave granted.

The Hon. R.J. RITSON: I have been sent some material by Dr John Fleming concerning matters that came to his notice about international trade in embryos. The material comes from a body whose letterhead and promotional pamphlets indicate that it is the Centre for Surrogate Parenting Incorporated, 8383 Wiltshire Boulevard, Suite 750, Beverley Hills, California. It advertises commercial surrogacy, using donated ova and donated embryos, and in the covering letter it advises that:

In addition, we have coordinated the implantation of frozen embryos, being sent from as far away as Australia, England and Israel, into surrogate mothers in California.

If Australia is supplying embryos as is stated in this material, would the Minister, consulting with his colleagues in other States, if necessary, attempt to discover where the embryos are coming from, if they are indeed, as claimed, going to California?

The Hon. BARBARA WIESE: I will refer the question to my colleague in another place and bring back a reply.

COURTS ADMINISTRATION

In reply to **Hon. K. T. GRIFFIN** (11 February).

The Hon. C. J. SUMNER: The Court Services Department recognises that there is insufficient literature available to guide litigants through the small claims system. The Department is currently reviewing its pamphlets on the subject, particularly in view of new legislation. This literature will not be available for another two to three months. In the meantime, all staff are instructed to assist litigants wherever possible by providing as much information as possible.

With regard to the specific circumstances of Mr Clarke, the report from the Court Services Department indicates that at no time had Mr Clarke's pursuance of his claim been unduly hindered. It appears that Mr Clarke's experience and subsequent complaint is more to do with being opposed by a difficult defendant than a faulty administration.

Unfortunately some defendants exploit the system and make it difficult to enforce the Court's judgment. This is an age-old problem.

However, the Registrar of the Christies Beach Court, who is travelling to Kangaroo Island shortly to train a newly appointed Sheriff's Officer, has made arrangements to discuss the situation with Mr Clarke in an endeavour to resolve his difficulties with the legal processes.

LEGAL AID

In reply to **Hon. K. T. GRIFFIN** (24 February).

The Hon. C. J. SUMNER: I have now had the opportunity of examining the High Court's decision in *Dietrich v R*.

In *Dietrich v R* the High Court established the principle that, other than in exceptional circumstances, an indigent person is likely to be denied a fair trial if, through no fault of that person, he or she is unrepresented in a serious criminal trial. The majority judgments in *Dietrich* concern the approach which should be adopted by a trial judge who is faced with an application for adjournment or a stay by an indigent accused, charged with a serious offence, who, through no fault on his or her part, is unable to obtain legal representation. The majority position, set out in the judgment of Mason C.J. and McHugh J. at 19, is that the trial judge, in the absence of exceptional circumstances, should adjourn, postpone or stay the trial until legal representation is available.

The Legal Services Commission at present refuses assistance in some cases where the principle in *Dietrich* might be applied. For example, an otherwise indigent accused may be denied assistance by reason of the application of a merit test to the matter. A court might also conclude that a person refused aid on the basis that he or she fails the means test is nevertheless indigent for the purpose of the principle in *Dietrich.*

Where as a result of the applicant proceeding unrepresented because of the Legal Services Commission's refusal of aid and the principle in *Dietrich* is applied, the proceedings would be adjourned or a stay granted. The result would be that such persons would not be brought to trial unless the Legal Services Commission was to review the decision denying assistance or funds were provided from some other source.

The decision rejects the view that there is any right to the provision of counsel at public expense. Nothing in the decision requires the Legal Services Commission to provide representation in cases that are outside its current eligibility criteria.

Clearly for the Legal Services Commission to provide assistance in these cases required by the *Dietrich* principle would place additional demands on its resources. As the Legal Services Commission is independent of government the government cannot direct the Commission to provide assistance in particular cases. The responsibility for ensuring that accused are brought to trial rests with the government, not the Commission.

While additional costs will be imposed by the decision, their extent is not clear. The Legal Services Commission is in the process of considering its options and when this process has been completed the full implications of the decision for government and the Legal Services Commission may be more apparent.

The decision is of concern to governments all round Australia and the matter was discussed at the meeting of the Standing Committee of Attorneys-General on the 4th February, 1993. The Standing Committee agreed to establish a working party to explore the possibility of limiting the ambit of the *Dietrich* principle. One possibility to be explored is the feasibility of defining what is meant by indigent and serious offence. The meaning of indigent, exceptional circumstances and serious offence was not spelt out by the High Court. In the absence of legislative clarification their meanings would be developed over time by the courts. This uncertainty should be avoided.

There have been cases where adjournments have had to be granted because an accused person has been unrepresented at trial. The Judges, Commonwealth and State DPPs and the Legal Services Commission have had discussions as to how matters are to proceed if a defendant is unrepresented. By raising the matter at the status hearing delays at the trial stage will be eliminated.

There is no doubt that the High Court's decision in *Dietrich v R* will have an impact on criminal justice. The full impact of the decision will only become apparent after a period of time and the situation needs to be monitored.

MOTOR REGISTRATION DIVISION

In reply to **Hon. DIANA LAIDLAW** (21 October).

The Hon. BARBARA WIESE:

1. In its endeavour to improve its management of the road network, the Department of Road Transport has been examining opportunities for alternative funding sources.

In this regard, an agreement was entered into with Contract Media Sales to include approved advertising inserts with motor vehicle registration renewal notices.

The additional funds raised, estimated to be up to $500 000 per annum, will reduce the impact of ever increasing costs to the road user and the State generally.

The Department is monitoring public reaction on this matter and will review the arrangements where necessary.

2. Under the two (2) year agreement, the Registrar of Motor Vehicles has the right to approve all advertising material. Contract Media Sales has the sole right to arrange for outside organisations to have advertising inserts included with motor vehicle registration renewal notices.

The Government does not warrant, endorse or recommend any of the goods and services advertised. Accordingly, there is no intention to vet businesses that contract through Contract Media Sales to advertise in this way. The contractor is aware that naturally, if a situation arose where the contractor failed to exercise appropriate judgment regarding the material enclosed, the Government would review the arrangement. I have requested that the standards incorporated in the Media Council of Australia's Advertising Code of Ethics be drawn to the contractor's attention to assist them in ensuring that the material inserted conforms with the intent of Government policies and statutes.

3. Contract Media Sales is responsible for arranging the contract and setting a rate for businesses wishing to advertise. The Department of Road Transport receives an agreed percentage of the fees collected for each insert posted.

CONTAINER TERMINAL

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

The Hon. BARBARA WIESE:

1. As you are already aware, detailed negotiations with the previous lessee of the Adelaide Container Terminal, Conaust Ltd, went on for many months during 1991 and 1992 with the view to agreeing a fair and equitable settlement which would enable the Government to introduce changes to the operation of the Adelaide Container Terminal. These changes are fundamental to the development of shipping activities in Adelaide to make it more internationally competitive.

The negotiations involved detailed and complex commercial issues and as I have previously announced, were concluded in early January.

Because of the commercial sensitivities surrounding the negotiations, at the request of Conaust Ltd, the Government agreed to the provision of a confidentiality clause in the final arrangements.

2. P&O Australia on behalf of the previous operator Conaust Ltd settled with the Government on 5 January 1993.

3. The proposal to operate the Adelaide Container Terminal was submitted by a consortium; South Australian Terminals Ltd which had as its major shareholders P&O and ANL.

Despite a significant amount of effort by staff of the Department of Marine and Harbors, the final proposal failed to meet a number of significant criteria set for the successful involvement of the container terminal in the proposed Adelaide Transport Hub.

There were particular difficulties with the proposal not addressing the support necessary for successful Transport Hub operations in Adelaide and the need to achieve improvements in cargo volumes.

As the Government has now announced, the new operator Sea-Land Containerised Freight Services took over the operations of the terminal from the 5 January 1993.

Throughout all of the negotiations to bring about this change, the Government was mindful of the sensitivities of such a change, -including the need to support and encourage trade based on the existing direct shipping calls to Adelaide.

PRIMARY INDUSTRIES DEPARTMENT

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

The Hon. BARBARA WIESE: The ODR report prepared by McKinsey and Co for the agricultural component of the new Department of Primary Industries was released in mid November for public comment until 25 January 1993. The report's recommendations are being considered by the Minister of Primary Industries and no decisions have yet been made.

The ODR report recommends focussing extension effort on identified opportunities in high potential commodities. This implies a reduced range of well packaged extension "products". Local projects and efforts in response to client inquiries would not be eliminated and would continue to reveal local clients needs and identify new opportunities.

The report estimates that the elimination of low impact activities in extension would allow a reduction of about 30% in effort devoted to current projects but with at least 20% of the saving being redirected to new extension projects with higher and more workable operating budgets for field-based staff. Overall the report recommends that only a modest potential exists for savings in extension with the number and locations of district offices requiring further examination according to the extension projects ultimately adopted across the State. The actual numbers of any service fees may be offset against savings.

In reference to the Streaky Bay and Lock district offices on the West Coast, an analysis based only on office size and locations suggested that the staff based at these offices could be transferred to Minnipa to make Minnipa a major service centre with better facilities and a crackle mass of staff.

In reference to cuts in the administration centre, the report recommends reductions can be achieved (in the order of 20% reduction in staff numbers) with many of the current activities either abolished or devolved. Savings would be in the order of $1.4m.

RUNDLE MALL

In reply to **Hon. J.C. IRWIN** (26 November).

The Hon. ANNE LEVY: The Minister of Housing, Urban Development and Local Government Relations has advised that what may not be as widely known is that for approximately 7 years, on Mondays to Saturdays, between 7.30 am and 10.00 am, the Adelaide City Council has provided, and is providing, parking free of charge at its Gawler Place (David Jones),

Grenfell Street (Harris Scarfe) and Rundle Street (cnr. Rundle/Pulteney Streets) car parks, each of which has a capacity of 700-800 parking spaces. Notices at entrances draw attention to this service and a daily average of 140 drivers take advantage of this free parking.

Bearing that in mind, the Minister does not believe that the lifting of the on-street parking machine fees in the city centre on and from 1 January 1993 will have a negative effect on shopping in the city. The Council claims that the fee increase represents a cost per hour which ranges from $0.15 per hour in a 4 hour zone to $1.20 per hour in a 30 minute zone and that this is much less than what is charged in most other Australian capital cities. In addition, the Council's off street car park charges for short term parking range from $1.00 to $2.50 per hour. The Council is progressively bringing on-street parking fees into line with its car park charges because of the limited supply of curbside space and the heavy demands upon it. The Council also provides free parking on the outskirts of the city.

In the matter of adequate transport the Minister of Transport Development believes that there is a satisfactory level of public transport conveying shoppers from the suburbs into the city and by the Beeline Bus within the city.

FRINGE BENEFITS TAX

In reply to **Hon. R.I. LUCAS** (24 November).

The Hon. ANNE LEVY: The Minister of Education, Employment and Training has advised that the Fringe Benefits Tax legislation has been amended exempting public education institutions from the payment of the tax for car parks provided to employees at schools.

SOUTH AUSTRALIAN FILM CORPORATION

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

The Hon. ANNE LEVY: The requirements of section 11a of the South Australian Film Corporation Act 1972 ensure that films made with Government funds are developed and produced to the highest standards and fully meet the client's needs. Producing a film or video is a very complex process involving a high level of knowledge of legal matters, industry employment practices, budgeting, production procedures, project development and marketing. While Government agencies may have the necessary expertise to commission brochures or employ public relations consultants, they generally do not have the expertise to oversee the production of films and videos. Arrangements under section 11a enable the Government Film Committee of the South Australian Film Corporation to assist agencies to identify their needs, to determine whether film or video would best meet those needs, to undertake the calling for an detailed assessment of tenders for each project, and then to oversee the production of the film or video. Projects undertaken by the Committee are financed 50% by the client agency and 50% by the Committee.

The Committee generally sets a budget upper limit, but not a lower limit, to assist prospective tenderers in assessing the client's requirements, a procedure adopted at the request of independent producers. Tenders are not assessed solely on the lowest quote. A contract will be awarded on the basis of creative interpretation, strength of the production team, production history, and cost effectiveness. Current experience is that costs for films or videos produced by independent companies to industry standards are in the order of $4,000 per minute.

In the case mentioned by the Honourable Member, the Northfield Laboratories of the Department of Primary Industries had invited three companies to tender for the production of a 10 minute video to form part of a marketing package to sell the Rota Virus passive immunity product overseas. One of the companies invited to tender was Message Management Pty Ltd and the three quotations received ranged from $11,000 to $66,000.

Subsequently the Department of Primary Industries Media Unit contacted the Executive Producer for the Government Film Committee to clarify the requirements of section l1a. Following discussions, Northfield Laboratories were informed that they could apply to the South Australian Film Corporation to seek exemption from the requirements of section 11a, or they could opt to apply to have the project undertaken and 50% financed by the Government Film Committee. The Laboratories had experienced difficulty in assessing the three quotations they had received and were also concerned that the project should be expertly managed. The Laboratories elected to proceed through the Government Film Committee and advised the three initial tenderers accordingly.

The Government Film Committee set an upper limit of $34,000 for the production costs and approved total expenditure of up to $40,000 for the project to include production costs, script development and administration fees. Forty production companies, including the three earlier tenderers, were invited to tender at short notice. Message Management Pty Ltd did not tender. Following full assessment of tenders received having regard to all of the factors mentioned earlier, a contract was let and filming is complete with post production work in progress.

TRANSPORT HUB

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister of Transport Development a question about the transport hub.

Leave granted.

The Hon. DIANA LAIDLAW: An article by Christopher Jay in the *Financial Review* yesterday cast doubt on the future viability of the Port of Adelaide and, in turn, the Government's transport hub concept. I am not sure whether the Minister has had an opportunity to read the article. It reported on the savage battle that is now being waged to determine which Australian port will be the winner in the race to secure an increased share of port business, a battle which is said to intensify when the National Rail Corporation gets the main line rail links between Australia's coastal capitals into optimum condition.

Mr Lou Russell, who is General Manager of Shipping Conferences Services Ltd, is quoted as stating that he does not believe the South Australian Government's concept of developing a niche market for exports to South-East Asia will occur because we do not have a cost effective infrastructure. Also, in respect to the proposed completion of the standard gauge rail connection between Melbourne and Adelaide various shippers report that this initiative will improve the economics of transporting containers across the continent to Fremantle to enjoy lower shipping rates to South-East Asia, Western Asia and Europe.

As the Government has been talking about the concept of Adelaide as a transport hub for some 3 1/2 years, I ask the Minister:

1. When will the steering committee the Government has established to assess the commercial viability of this transport hub concept finally report to the Minister?

2. Why does the steering committee include only public servants and not representatives of carriers and shippers or indeed rail and road transport operators, people who are directly and daily involved in the intensely competitive business of trade and transport?

The Hon. BARBARA WIESE: I am surprised that the honourable member needs to ask this question because I understand that during the past fortnight she received a briefing about the transport hub from the coordinator of the transport development portfolio.

The Hon. Diana Laidlaw: That is exactly why I am asking. I am asking it for that reason and because of the article.

The PRESIDENT: Order! The honourable Minister.

The Hon. BARBARA WIESE: Mr President, information as basic as who is on committees and what sort of administrative arrangements are being pursued, I would have thought were amongst the fundamental matters that would have been addressed during the course of that briefing. To answer the questions about those administrative matters, I indicate that there are two levels of consultation taking place on the transport hub concept and it would seem that the honourable member either did not listen when she was briefed or failed to take in the information that I am sure would have been provided. There are two groups of people—

The Hon. Diana Laidlaw: Why haven't you appointed them to the steering committee?

The Hon. BARBARA WIESE: Do you want an answer or do you want to give it yourself?

The PRESIDENT: Order! The honourable member asks a question and then she comes in with another question while the answer is being given. I suggest she listen to the answer and, if she is not happy, she ask another question.

The Hon. BARBARA WIESE: Mr President, there are two levels of consultation taking place with respect to the transport hub concept and there are very good reasons why there are two groups of people who are associated with the development of the concept. There is, as the honourable member has indicated, a steering committee which comprises relevant public sector representatives whose job it is to steer the project on behalf of the Government. Then, in addition to that, there is a reference group which comprises people from relevant private sector bodies, from rail organisations and all of those other interests that one would expect to have an interest in the development of the transport hub concept. That reference group will be working closely with the steering committee as appropriate providing advice and feedback as proposals are developed that relate to the transport hub concept. I think it is important to realise that individual interests within the private sector and rail organisations, and others will have conflicting interests in these matters and it is therefore important that ultimate responsibility for the development of the concept rest with the Government and with Government organisations.

So, there are good reasons for separating responsibility, and the public servants who are involved with the steering committee represent the organisations that will have direct responsibility for carrying out any project work that results from the work that is currently under way to re-examine the concepts that previously were put forward with respect to the transport hub. I am sure that the honourable member is aware that a firm of consultants is currently looking at the original concepts for the transport hub in very close detail and preparing a feasibility study for the Government. I understand that the report from that organisation is due in May and, once we have that, the relevant bodies will assess it and make recommendations to the Government.

FIREARMS (MISCELLANEOUS) AMENDMENT BILL

In Committee.

Clause 1—'Short title.'

The Hon. C.J. SUMNER: I will use this opportunity to provide answers to some members. I am not sure who asked these questions, but nevertheless the answers are as follows. At the end of January 1993, 401 758 firearms were recorded on the computerised firearms control system.

With respect to licences, at 31 January 1993 the number of persons who had not renewed their licence yet still had firearms recorded against the licence was 14 682. The firearms section sends a renewal notice and two follow-up reminder letters to licence holders with firearms, yet each month many do not renew. When the applicant is spoken to by police, the main reasons for non-renewal are the cost, namely, $77 for a three-year licence, and non-receipt of the renewal notice due to a change of address that was not notified to the Registrar as required.

With respect to registration, at 31 January 1993 the number of firearms which have been sold but not registered by the current owner was 17 832. The previous owners of all these firearms have notified the Registrar that the firearm has been sold. However, for various reasons the current owner has not registered the firearm.

The new firearms control system is able to identify these persons and a letter is sent as described, reminding the owner of the requirements of the Act and giving the owner an opportunity to register the firearm or explain if he has disposed of it. The Police Department has provided additional resources and personnel to firearms section in order to locate persons with expired licences and persons with firearms that they have not registered. The use of letters and phone calls to persons in relation to a licence or firearm is much less resource intensive than sending a police officer in a patrol car.

Apparently, a question was raised on page 1 214 in the second column, which is a useful way to respond. The answer to that is that the matter in relation to firearms deactivated over 10 years ago has been rectified. Questions raised in relation to the Crown's not being bound are incorporated in the orders, policies and procedures issued by the chief executive officer of the

Government departments that possess and issue firearms for use by employees during the course of their duties. It would be for the Chief Executive Officer to decide whether an employee who has had his private firearms licence cancelled should be stopped from possessing a firearm in the course of employment. Such decision would have to be made after considering all circumstances, including the offence committed that resulted in the licence cancellation.

The Hon. Dr Ritson asked a question dealing with freedom of information and the firearms registry, suggesting that the freedom of information section and the firearms registry had been amalgamated and that this was being presented as an increase in staffing to the firearms registry. Effective from 20 January 1993, the South Australian Police Department placed the freedom of information section and firearms section within MI division for administrative and organisational purposes. Both sections continue to operate separately, and there has been no attempt to present this as being increased staffing for the firearms section.

The Hon. Dr Ritson also asked whether the police allocate numbers because firearms manufacturers do not put a serial number on the magazine, and asked whether people will have to have those magazines taken to the police to have an allocated number engraved on them. The answer is that the Registrar will not be allocating serial numbers for magazines, nor will there be a requirement for magazines to have a serial number engraved upon them. Many owners of such magazines will not be required to notify the Registrar, as they will be covered by the amendments to section 29(2)(a)(i) and (ii) of the Act.

With respect to the issue raised by the Hon. Mr Dunn to the effect that the Minister or his committee will have quite strong powers to determine what is a firearms club and whether it can be established, the answer is that the Minister has been responsible for the recognition of clubs since the introduction of the Firearms Act 1977. All the amendment seeks to do is formalise the recognition of clubs and paint-ball grounds and, if necessary, revoke such recognition.

The Hon. Mr Dunn also states, 'Before you get a licence for a firearm you should have to go to a TAFE college, as you do with a driver's licence, and go through a proper course. That does not happen today.' The answer is that arrangements have been made for all new licence applicants to attend appropriate firearm training courses to be conducted through TAFE, recognised clubs and approved instructors for the security industry.

The Hon. R.J. RITSON: Because this is an amendment to an amending Bill to a principal Act—the amending Bill in the middle not having been proclaimed—it is a little difficult to go through this systematically. I want to ask a few questions generally about the Bill and I hope, Sir, you will give me the latitude to do that.

One of the principal concerns, certainly something that concerns sporting bodies a good deal, is the future role of the consultative council. New subsection (4e) provides that the registrar cannot vary a licence on his or her initiative without the approval of the consultative committee. So that that establishes the continuing role of the consultative committee, or it appears to. However, the part that deals with the Registrar actually granting a licence in the first place appears to give him the power to act without reference to the consultative committee and there is anxiety in the community that licences may be refused or renewal not granted without reference to the consultative committee. I realise that elsewhere in the legislation the powers to act are given only in an emergency situation for short term operation. Can the Minister say what the role of the consultative committee will be in relation to the Registrar in terms of granting or withholding a definitive licence?

The Hon. C.J. SUMNER: I am advised that a licence cannot be refused without the concurrence of the consultative committee.

The Hon. R.J. RITSON: I wanted that on the record for those constituents. The question of infrastructure concerns me. Mr Chairman, the work involved in subdividing the licences into a group with a larger number of licences may indeed require a considerable change in the infrastructure, perhaps a reprogramming. I agree with the creation of the new category of licence for the class of firearms that were previously described as military style or pistol grip, which were previously to be dealt with by attrition through a combination of State legislation and the use of customs and excise powers acting on the advice of the States' police commissioners. In 1980 I argued that it would indeed be more sensible to use the special licensing, which a club or clubs had requested at that stage, so that the permit for this class of firearm would be contingent upon club membership, as is done with handguns amongst other things. I really doubted the necessity to separate the self-loading rim-fire firearms from the bolt action rim-fire firearms.

Would the Minister tell me what sort of time frame it will take to build the infrastructure to allow for the proclamation of this Act and eventually the tabling of the regulations under the Act? And how much computer time and staffing time will be required to reorganise the registry?

The Hon. C.J. SUMNER: I am advised that the Minister's current intention is to have the regulations ready in April but they will then have to go through their four months tabling period. It is intended, as I understand it, that that should be observed in this case. There are no special reasons why the regulations should be brought into effect immediately. So, I guess that is four months from sometime in April if that timetable is kept. That obviously depends to some extent on resources which Parliamentary Counsel are able to devote to this task but I am advised, by the officer here today, that that was the intention.

The licences to which the honourable member referred were included in the 1988 legislation and accordingly the computer capacity programs, which are necessary to bring into effect this legislation, have been prepared and are ready to operate.

The Hon. R.J. RITSON: A purported copy of a draft—I think the third draft of regulations but not necessarily the final one—has been circulated amongst interested parties and it contains a proposition to finally legitimise the Adlam collection. Is that true?

The Hon. C.J. SUMNER: Yes. I clarify one point I made earlier; it was not exactly correct. The categories

of licence the honourable member referred to were not in the 1988 legislation but were in the recommendations of the select committee of 1988. It was anticipated that they would be in this new legislation and accordingly the computer program capacity, etc. has already been prepared.

The Hon. R.J. RITSON: At the time of the last lot of regulations there were dealers and private individuals who collectively possessed quite a large number of silencers. Indeed, there are jurisdictions where their use is allowed. As the law relating to silencers was previously cast, it was permissible to own but not to use a silencer. The difficulty stated by the Government was that this caused a bit of confusion. If someone was suspected of using a silencer on a property where the owners did not want shooting to occur, it became very hard to enforce the law if people were allowed to possess them, because a person would simply say, 'It is in my pocket, but I am not using it.'

I wonder about the necessity for dealing with silencers. The legislation takes away a considerable amount of money from dealers who have laid out for the silencers, and private individuals, who may like shooting small game, might want to take a vacation in a jurisdiction where silencers are permitted. Will the Minister indicate what percentage of firearms crime in this State is committed with the use of a silencer in the hands of the registered owner?

The Hon. C.J. SUMNER: I am advised that at present this question cannot be answered.

The Hon. R.J. RITSON: I want to express doubt about the wisdom or necessity of causing that economic loss to dealers who still have many silencers in stock.

Clause passed.

Clause 2 passed.

Clause 3—'Amendment of section 5—Interpretation.'

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

Page 2, lines 5 to 7—Leave out the definition of 'pistol' and insert the following definition:

> 'pistol' means a firearm the barrel of which is less than 400 millimetres in length and that is designed or adapted for aiming and firing from one hand and is reasonably capable of being carried concealed about the person;

First, I thank the Attorney-General for providing answers to questions that were asked on second reading. I guess it will be too late, but I shall be interested to read those answers when I pick up *Hansard* tomorrow. As shotguns and rifles are defined by their barrel length, I believe that pistols should be defined to avoid the anomaly of some legitimate long arms being treated as pistols. From the debate in the other place and asking questions about it I cannot find any explanation for the definition of 'pistol' meaning a firearm of any length of barrel. I would like support for the amendment, but I would also like to know why, when long arms are defined by the length of the barrel, pistols are not when to me, as a lay person, they are totally different things. I urge honourable members to accept the amendment.

The Hon. C.J. SUMNER: I am advised that in the Bill the definition of a pistol is taken from the regulations which came into effect in 1980 and have now been transposed into the Act, so there is nothing new in this definition of 'pistol'. I am advised that no problem arises if we accept the definition of a pistol where it talks about the length of the barrel. The first part of the amendment is acceptable, but I am advised (not being much of an expert in this area) that some pistols are adapted for aiming and firing from two hands. If we restricted it to one hand, we would leave some pistols not covered by the statutory definition. I move to amend the Hon. Mr Irwin's amendment as follows:

Delete the word 'one' and replace it with 'the'.

The Hon. PETER DUNN: The word 'pistol' in the dictionary is defined as a pistol to be handled with one hand. The definition of 'hand gun' would probably be better. I understand that ordinary pistols are often operated by both hands. What the Minister says about the use of two hands is correct, but a pistol is not a weapon that is put up against the shoulder. It is held in the hand and the arm becomes an extension of the pistol. The definition of 'pistol' in the dictionary refers to one hand.

The Hon. J.C. IRWIN: I accept the amendment to my amendment if that will have a better outcome for the average Joe Blow like me to understand.

Amendment to amendment carried; amendment as amended carried; clause as amended passed.

The Hon. R.J. RITSON: Mr Chairman, I seek a little latitude. The movement from clause 1 to clause 2 happened rapidly, while I was turning a page, and I had two further general questions to ask. Mr Chairman, may I ask those further questions?

The CHAIRMAN: Yes.

The Hon. R.J. RITSON: The first question relates to the endorsement of the licence and the purpose for which the licence is required. If somebody has a rifle for competitive rifle shooting and he or she wishes to go hunting with that firearm, as it is proposed to be regulated this would not be possible without further endorsement by the police. That seems inordinately over-regulatory. In addition, of course, the person requires a hunting licence — I forget which office issues that licence — which is required as a separate exercise, and in the case of private land they require the permission of the landowner. So a person with a firearm, which he uses predominantly for target shooting and which is registered for that purpose, ought really to be able to go hunting as long as that person complies with the other hunting regulations. A person with a gun used for clay pigeon shooting ought, provided he complies with the other government regulations, to be able to go duck shooting with the same firearm, without having to go back to the police. Would the Government consider taking off that extra little restriction, which is just work for the police, to no obvious effect?

The Hon. C.J. SUMNER: All I can say to the honourable member is that we will have to agree to differ on the matter. The honourable member referred to the requirements laid down in section 13 of the 1988 Act, requirements which have already been passed by the Parliament and which are not being affected by the Bill that is before us. The honourable member has a view that it is unduly regulatory—

The Hon. R.J. Ritson interjecting:

The Hon. C.J. SUMNER: As I understand it, the situation is as set out in section 13 of the 1988 Act. I understand that this proposal came from a select committee, in any event. It was agreed to by the Parliament in 1988 and put in legislation. If the

honourable member wants me to make any submissions to the Minister about it, I will be quite happy to do so.

Clauses 4 and 5 passed.

Clause 6—'Application for firearms licence.'

The Hon. PETER DUNN: Line 22 of clause 6 states '...that the dangerous firearm will be used for a purpose authorised by the regulations'. About eight lines above that it states 'that the Registrar must not grant an application for a firearms licence unless...'. Does that mean that the Registrar can also grant a licence for that firearm or for another sort of firearm? It is a little unclear. I do not know what the regulation states. I am assuming that the Registrar, under a special application, may be able to authorise the use of that firearm for certain purposes.

The Hon. C.J. SUMNER: I would have thought that was obvious from the Act. If the honourable member reads the Act he will see that it states that an application for a firearms licence authorising possession of a dangerous firearm can only be granted if the Registrar is satisfied that the dangerous firearm will be used for a purpose authorised by the regulations. The regulations have to set out the purposes for which a dangerous firearm can be used. Then the Registrar has the power, under section 12(7) of the Act, to grant the firearms licence.

Clause passed.

Clause 7—'Provisions relating to firearms licence.'

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

Page 3, after line 31—Insert subsection as follows:

(8a) The Registrar cannot—

(a) restrict the classes of firearms to which a licence relates;

(b) vary or revoke a purpose endorsed on a licence;

(c) vary a licence condition,

on his or her initiative under subsection (8) without the approval of the consultative committee.

This amendment relates to concerns expressed to the Opposition by firearm users about the power of the Registrar or the power vested in a delegated officer. As I understand it, the provisions of the Bill resulted from the select committee's report, but I do not think this amendment will have to be used very often. The amendment suggests that the Registrar not have exclusive power to restrict a class of firearm, vary or revoke a purpose endorsed on a licence or vary a licence condition on his or her initiative without referring it to the proposed changes endorsed or not endorsed by the consultative committee.

The Hon. C.J. SUMNER: The Government opposes this amendment. An applicant for a licence has the right under the Act to appeal to a magistrate if he or she is dissatisfied with the decision of the Registrar. The Government can see no point in inserting this added process of referral to the consultative committee. If there is a refusal, that must go to the consultative committee, but we do not think it is necessary that decisions relating to the restriction on classes of firearm, varying or revoking the purpose or varying a licence condition should have to go to the committee. That would add another layer of bureaucracy to the system, and is not supported by the Government, given that clear rights of appeal to a magistrate are provided to an applicant who is dissatisfied with the decision of the Registrar.

The Hon. I. GILFILLAN: I indicate opposition to the amendment. I would like to make a couple of comments regarding discussions I have had with the Combined Shooters and Firearms Council, recognising, as that organisation did, that we hold different views in certain areas in the control of firearms. The council offered some construction and practical suggestions on how the legislation could and should be imposed. It indicated to me orally and in writing that it had difficulty in having discussions with the Government.

I am not in a position to verify or deny that, but it is a pity if those who are responsible for the drafting of the Bill and, in turn, for the drafting of the regulations do not take the opportunity to have full discussion with the Combined Shooters and Firearms Council. I advised the council to put in writing its criticisms and to make them available to the Legislative Review Committee in particular, as that committee would be referring to the regulations. Perhaps that observation will be appropriate later, but I oppose this amendment.

The Hon. J.C. IRWIN: From advice we have received, firearm users are not worried about another bureaucratic layer. As I mentioned in my second reading speech—adding to what the Hon. Mr Gilfillan has said—from what I have been told of the consultation process, new Minister Mayes tended to take the attitude that, as he had been Minister of Recreation and Sport, many people in the firearm industry who use sporting guns and rifles knew him well enough to ring him. That was the consultation process.

I understand that it was very difficult for any consultation to take place with the Minister, because he tended to say, 'They know me well enough; they can ring me if there is any problem.' So, I disagree with the remarks of the Hon. Mr Gilfillan, and I am sorry that he will not accept this amendment. I am advised by people within the sporting industry that firearm users are not worried by this bureaucratic layer that he says will result from this amendment.

Amendment negatived; clause passed.

Clause 8 passed.

Clause 9—'Application for permit.'

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

Page 4, after line 17—Insert paragraph as follows:

(ba) By striking out from subsection (3) 'of the relevant firearm' and substituting 'of a firearm of that class'.

This amendment is simple. Clause 9 refers to the following provision in the Act:

A permit authorising or approving the purchase of a firearm can only be granted if the applicant holds a firearm licence that authorises possession of the relevant firearm and has, subject to subsection (4), held the licence for at least one month.

As I understand it, the regulations drafted to reflect this Bill cover a number of classes of firearms from class A to class G inclusive. Although I have not seen the regulations drafted in accordance with the 1988 legislation, the shadow Minister (Mr Matthew) listed the classes that he has seen and the corresponding regulations on page 1657 of *Hansard*. Although those regulations may not be relevant once this Bill and the 1988 Bill are incorporated in the Act, I am told that the classes are: class A—air rifles, air guns, paint-ball firearms and .22 rim-fire rifles but not including self-loading .22 rim-fire rifles; class B—shotguns but not

including self-loading shotguns; class C—pistols; class D—centre-fire rifles but not including self-loading rifles and all other kinds of firearms that are not self-loading; class E—self-loading .22 rim-fire rifles; class F—self-loading shotguns; and class G—self-loading centre-fire rifles and all other kinds of firearms not already classified that are self-loading. Those seven categories give some guidance as far as regulations that have already been written are concerned. I understand that they are in draft form, and, although I cannot recall from where, I have heard that there may be double the number of categories further down the track.

If a person is considered to be fit and proper to be issued with a permit to purchase a firearm in accordance with one of those classes, it is unduly restrictive to confine the purchaser to a particular type of firearm. In other words, if you have an air rifle licence under class A you ought to be able to buy the ammunition for any firearm in class A, which includes air rifles, air guns, and paint-ball firearms. I am not sure why .22 rim-fire rifles are covered by class A as the remaining firearms obviously fall within the air propelled category.

The classes should be deemed sufficient to be noted on the licence and give the purchaser the flexibility to look at a number of firearms within a particular class. I do not believe that this amendment alters the intent of the legislation as it does not permit a person to purchase a firearm outside the class and therefore one that may be regarded as drastically different or more dangerous from those classes as I know them. I urge honourable members to consider this amendment.

The Hon. C.J. SUMNER: The Government opposes the amendment. Under the proposed regulations which have been referred to by the honourable member, firearms in class A are air rifles, air guns, paint-ball firearms and .22 rim-fire rifles, but not including self-loading .22 rim-fire rifles. The Government's intention is that a licensed 16-year-old would only have a licence which authorises possession of the relevant firearms, namely, air rifles and air guns, and not possession of all firearms of that class. I understand what the honourable member is trying to achieve. His amendment would enable a person under 16 years of age to get a paint-ball firearm and a .22 rim-fire rifle, and be licensed for that. The Government's intention is to restrict those under 16 years of age to air rifles and air guns, and that is why the Bill has been drafted in this way.

The Hon. I. GILFILLAN: I appreciate the difference between .22 rim-fire rifles and air guns, and having heard the Attorney's explanation it seems to me that that is a better provision to support. I confess to the Hon. Jamie Irwin to not having analysed the effect of his amendment directly on the principal Act. I am only going on the argument put forward but certainly, as I understand it, if the Attorney is accurate, it seems to be more appropriate that people under 16 years of age are not entitled to have .22 rim-fire rifles.

The Hon. PETER DUNN: If a gun is purchased at an auction and subsequently the purchaser is not granted a permit, what happens to the gun? Is it confiscated?

The Hon. C.J. SUMNER: If you are not licensed to possess the gun, you cannot continue to hold it. You have to dispose of it, by giving it back to the dealer, or indeed the auctioneer if that is the case.

The Hon. PETER DUNN: I assume you mean the original owner.

The Hon. C.J. SUMNER: Whoever is dealing with it, either an auctioneer or a firearms dealer, the point is that, if they do sell it to a person who cannot subsequently get a licence, that person who seeks the licence is not entitled to possess the gun; they must dispose of it. It is a matter of taking it back to the dealer and getting a refund. If the dealer refuses to give their money back, they will just have to get rid of it in some other way. They will have lost their money.

The Hon. PETER DUNN: It seems a very messy way of doing it because a considerable number of guns are purchased at auctions and clearing sales in particular. What happens to the rifle? Is it handed into the police? Is it confiscated after the permit has been refused, for instance?

The Hon. C.J. SUMNER: I am further advised that any auctioneer who is auctioning firearms is supposed to hold a firearms dealers licence, so the restrictions that apply to dealers would apply to auctioneers.

The Hon. PETER DUNN: That means that at every clearing sale they would have to have a firearms dealers licence.

The Hon. C.J. SUMNER: That is my advice.

The Hon. PETER DUNN: They don't now, do they?

The Hon. C.J. SUMNER: In the amendments which were passed in 1988 but which have not been proclaimed, a dealer is defined as a person who, among other things, 'carries on the business of a pawnbroker or an auctioneer, and handles firearms in the course of that business'. That is what the law will be once this legislation is proclaimed.

The Hon. PETER DUNN: That is not happening now, because I was at an auction the other day.

The Hon. C.J. SUMNER: I am advised that there is an exemption at the present time but that, when this comes into force, auctioneers will be required to be registered as dealers if they are going to sell firearms, and then the restrictions on dealers that exist in the Act will apply.

The Hon. J.C. IRWIN: I ask the Attorney why, in the drafting of the regulations providing the different classes, it was seen appropriate to include in class A air rifles, air guns and paint-ball firearms, which are all propelled by air, and the .22 rim-fire rifle? Is it likely that, when the new regulations are written to the consolidated Act, that it is more than likely that that class will be split to have air in one class and any projectile using something other than air, for example, explosive powder, etc., in another class.

The Hon. C.J. SUMNER: I understand that that is the definition that has been in existence since 1980 except that self-loading .22 rim-fire rifles have been taken out of the definition. Apart from that the definition is the same, so it just carries on from the definition that has been in place since 1980. When I provided the previous answer I referred incorrectly to persons under the age of 16; it should have been persons between the ages of 16 and 18 who can be licensed to possess an air rifle or air gun but who, under the Government's proposals, are not entitled to be licensed to possess a

paint-ball firearm or a .22 rim-fire rifle. However, the Hon. Mr Irwin's amendment would enable people between the ages of 16 and 18 to possess the whole of class A and not just the air rifles and air guns.

The Hon. J.C. IRWIN: It just seems to me that what I am saying is very logical, and hopefully the people who write the regulations that eventually will pass through here and go out to the public will see the sense of splitting out air rifles, air guns and paint-balls and leaving them in a class A, and putting other rifles in another category. Paint-ball firearms are totally new to me. Some year or so ago I was briefed on them by people who operate them and I have only seen brochures and I understand how they work. I can understand there is some excitement about them and a fairly large amount of safety involved.

As I said before, a permit authorising or approving the purchase of a firearm can only be granted if the applicant holds a firearm licence that authorises possession of the relevant firearm, and it would be much easier if we had air rifle, air gun and paint-ball in one class which allowed that permit holder to own any of those in that class, rather than, as now, with the whole argument hanging on the fact that there are rather more deadly weapons in the same class as the less deadly ones. As you go down the classes some of them get even more deadly but where they do they are almost all in a class of their own. They do not put shotguns, rifles and .22s in the same class.

The Hon. I. GILFILLAN: I would like to endorse what the Hon. Mr Irwin said about separating .22 rifles from air guns. I believe they are in a different dimension of risk and lethal potential, so I think he makes a good point and I hope the drafters of regulations will take that into account. However, that does not persuade me that his amendment should be supported because the argument really is, 'What should be the ingredients of the classes as they are defined?' Until that is done 'relevant firearm' is probably a more appropriate provision that gives more assurance that the right firearms will be made available and those not appropriate will be kept out of the hands of the 16 to 18-year-olds, so I continue to oppose the amendment.

The Hon. C.J. SUMNER: I understand the point that the Hon. Mr Irwin is making and it does seem odd to me, as an amateur in this area, that .22 rifles are in the same class as air rifles and air guns.

The Hon. I. Gilfillan: They are much more dangerous.

The Hon. C.J. SUMNER: I agree with you.

The Hon. Peter Dunn: They have twice the explosive power.

The Hon. C.J. SUMNER: I am agreeing with you. However, this has been the classification system since 1980 and I am not sure what would be entailed in putting in yet another category of licence. All I can say, is that I note that what the honourable member has said to me at least, not someone who knows a great deal about firearms, seems to make some sense. I can only suggest that the matter be referred to the Minister to see whether or not the honourable member's suggestion can be acceded to.

Amendment negatived; clause passed.

Clauses 10 and 11 passed.

Clause 12—'Obligations on medical practitioners.'

The Hon. R.J. RITSON: The wording in the indemnity part of clause 12 refers to civil and criminal liability. Does the word 'civil' embrace also the professional liabilities in the case, for example, of a complaint of breach of confidentiality before a tribunal such as the Medical Board or the Medical Practitioners Professional Conduct Tribunal, because at times in legislation they do extend indemnities to cover professional complaints that are not part of the ordinary civil or criminal law? Is it intended for that indemnity to apply to the professional complaints areas or is it necessary to provide additional indemnity?

The Hon. C.J. SUMNER: The answer to the honourable member's question is 'Yes'. That is also the view of Parliamentary Counsel.

The Hon. R.J. RITSON: Are you saying it does require extension?

The Hon. C.J. SUMNER: No civil liability means no civil liability.

Clause passed.

Clause 13 passed.

Clause 14—'Acquisition of ammunition.'

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

Page 6, lines 6 and 7—Leave out these lines and insert—

14. Section 21b of the principal Act is amended—

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

(a) a firearms licence;;

(b) by striking out from paragraph (b) of subsection (1) of that kind";

(c) by striking out from paragraph (a) of subsection (3) "of the kind that may be acquired under the permit";

(d) by striking out from paragraph (a) of subsection (5) "that authorises possession of a firearm designed to fire that ammunition";

(e) by inserting after paragraph (d) of subsection (6) the following paragraph:

I know this is a pretty important part of the Bill before us but this amendment proposes to amend a number of the parts of section 21(b) and effectively removes any reference to ammunition for a particular firearm, of a particular kind or acquired under a particular permit. The reason I move it is simple. If a person with a category B licence who is a member of a firearm club goes to a dealer to purchase ammunition for his own firearm and that of a fellow club member's who has a licence for a firearm under a different category, unless that person has a licence for a firearm which is capable of firing ammunition under both categories, he cannot make both purchases. We have had a number of consultations with groups and with people writing to me about this matter of clubs; perfectly responsible people in clubs, holding different licences, should be able to go under the umbrella of that club to buy ammunition for other club members.

It seems unduly restrictive although, as I said earlier, I realise the importance of the legislation. I say that cautiously, because we must have some concern over ammunition purchases. However, I stress that we are talking about people who already hold a firearm licence and who have been recognised as being very responsible, responsible enough to hold such a licence, so we do not

see why this should not be allowed along the lines of my amendment.

The Hon. C.J. SUMNER: The Government opposes this amendment. We believe that the purchase of ammunition should be tied to the appropriate firearms licence. This amendment would permit the purchase of ammunition which is not tied to the licence. Accordingly, it is opposed.

The Hon. PETER DUNN: This really puts an impediment on people who live a long way away from their supplier. It might, for instance, be a station owner who is destroying vermin such as dingoes, foxes or rabbits, and whose wife goes on the weekly trip to collect the mail, perhaps from Oodnadatta, Wudinna or anywhere. Her husband says, 'Pick me up 200 rounds of .22 ammunition.' That is fairly innocuous but, under this amendment, that cannot be done. It also stops the mailman from picking up ammunition, as happens now on many occasions.

I was at Mount Sarah Station a little while ago and I took their order, actually. I was flying to Oodnadatta and took their order down there. On it had 'ammunition', which was to be taken back by the mailman. But that will not be allowed to happen. I would have thought that an authorisation quoting a number would have been fair enough, where the person is known, whether it be the wife, the mailman or whoever it may be. Therefore, the person who has the licence is responsible to see that that ammunition gets to them. It is a bit of bureaucratic humbug. You can have a rifle but what are you going to do—spit through it?

The Hon. I. GILFILLAN: There should be control of sale of ammunition and I have believed so for some time, but I have also observed every time we have discussed this legislation and control of firearms that there must be a practical approach to the non-metropolitan areas. The simple practicality that the Hon. Peter Dunn has referred to in one instance must be taken into account. It may be that it can be taken into account in regulations so that certain prescribed areas can have ammunition delivered to a permit holder under certain complied with paperwork, but the basic principle of control of ammunition and keeping tabs on quantity and to whom it is sold is of absolutely paramount importance in the legislation, and I certainly do not want to see that reduced in the Act or in this amending Bill.

As far as I can tell from a quick look at the amendment, I assume that the controls on the ammunition were passed in the 1988 Bill and have been in an Act but not proclaimed for some five years.

The Hon. C.J. Sumner: Yes.

The Hon. I. GILFILLAN: So, people have had a lot of time to prepare for this. I repeat support for the point that the Hon. Mr Dunn makes. The point he makes does not mean that the bulk of metropolitan South Australia should suddenly cast out this move to control the handling of ammunition. The right way to solve it is to get a reasonably well supervised and practical solution for those people who do suffer the tyranny of distance. It is absolutely correct. The Government must be obliged to look at ways—and it may be possible to be done through regulations—in which people can get their ammunition without personally fronting up to the outlet. I believe that is a point that will need to be addressed.

The Hon. C.J. SUMNER: I am happy to look at that. I have already indicated that I was going to take up with the Minister an earlier point about the categories of the firearms licence. I am not sure whether this can be fixed, but my inclination, depending on whether the Hon Mr Gilfillan is happy to do it, is for me to oppose this amendment, because it certainly goes too far and is completely unacceptable in the form which it is in. I will report back on the matter subsequently and, if need be, we can recommit the clause.

Amendment negatived; clause passed.

Clause 15—'Appeals.'

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

Page 6, lines 13 to 27—Leave out these lines and insert—

(a) by striking out subsections (1) and (2) and substituting the following subsection:

(1) A person aggrieved by a decision of the Minister or the Registrar may appeal against the decision to a magistrate sitting in chambers;

(b) by striking out from paragraph (b) of subsection (3) 'Registrar' and substituting 'Minister or Registrar'.

It is a pretty simple amendment. It is one that allows the person aggrieved by the decision of the Minister or the Registrar to appeal against the decision to a magistrate sitting in chambers. This is the—I suppose I can use the word—infamous rely from the honourable the Minister in the Assembly who says, 'I am not keen on being subject to a magistrate sitting in chambers on me'. Not many Ministers are but if they are making decisions affecting other people then maybe they have to be judged by others and that is the intent of the amendment. I notice from Minister Mayes' advice that there are two avenues already available: where the Minister must provide the applicant with a written statement setting out the reasons for any refusal, and before revoking a decision or a declaration the Minister must give the operator at least two months written notice of the proposed revocation setting out the Minister's reasons. I do not think it is good enough, when someone is going to lose a certain advantage they have enjoyed, whether they be given two months notice in writing or whatever—if they are going to lose it, they are going to lose it, and that is the end of it. They cannot appeal at all in relation to a ministerial decision. I am simply asking for honourable members to support this rather simple amendment that allows the decision made by the Minister to be judged by someone else.

The Hon. C.J. SUMNER: The Government is opposed to this and I would ask the Parliament to think about it. I do not know of other provisions where a Minister's decision is the subject of a review by a magistrate. I do not think it is appropriate that it should be. The area of ministerial decision making in this Bill is reasonably narrow and, as has been pointed out before, there are other means whereby Minister's decisions can be queried. But I do not think it is appropriate that they can be the subject of being overturned by a magistrate. I think it is quite inappropriate—and I am sure the Hon. Mr Griffin would agree with me. If you are looking at the appropriate relationship between the Parliament, the Executive and the courts, decisions that are made by Ministers should be able to be queried in Parliament, in the public arena. They are policy decisions generally and ought not to be queried by the courts, or if they are to be

queried by the courts then it should probably be by the Supreme Court and not by a magistrate. Basically, what you are doing is shifting the decision making process from the elected representatives to a non-elected official in the form of a court and—

The Hon. K. T. Griffin interjecting:

The Hon. C.J. SUMNER: That may be, but my understanding is that in this Bill the areas of decision making by the Minister are quite limited and I do not think that this appeal procedure should be introduced for the Minister. There is a right for people to appeal to a magistrate by a decision from the Registrar and I think that is not inappropriate.

The Hon. I. GILFILLAN: In the commentary that I received from the Combined Shooters and Firearms Council of S.A. Inc., in relation to the right of appeal they say:

The provision of any singular person in the service of a democratic community, with powers that are not subject to any appellant conditions, is totally unacceptable for any reason in our free society. Whilst the House of Assembly made some minor amendments in this area they are not enough. We are totally amazed that any responsible government can even suggest such proposals let alone to attempt to promulgate such. The whole Act and the regulations must be subject to normal legal redress.

I understand that normal legal redress probably is still available and I ask the Attorney to reassure the Combined Shooters and Firearms Council. It appears to me that the issue, which is currently being debated is whether in fact a Minister's ministerial power to make a determination is automatically available to be appealed through a magistrates court. That is what I understand the Attorney said is unacceptable to the Government, and it would be unacceptable to me, but is there any foundation in the Attorney's view to the claim that this Act is not subject to normal legal redress and I assume it means the normal processes of taking matters to court.

The Hon. C.J. SUMNER: Subject to the general law, obviously, of prerogative proceedings, which can be taken to correct errors in administration, and in this case could be taken against the Minister, they would be taken in the Supreme Court. So if there is no provision for a Minister's decision to be appealed to a magistrate then the normal law would apply and the aggrieved person could take prerogative writ proceedings in the Supreme Court. That is obviously more expensive and more complex than the magistrates appeal decision but I think if Minister's decisions are going to be reviewed then they ought to be being reviewed, if at all by a court, at the Supreme Court level and not at the level of the magistracy. In the long run it may well be that these rights of appeal will be included in the Administrative Appeals Division of the District Court. That is probably the most appropriate way to look at it. If that is the case then no doubt these appeal provisions could be relooked at, but I certainly do not support, as a matter of principle, the rights of appeal against a Minister's decision going to a magistrate.

Amendment negatived; clause passed.

Clauses 16 to 27 passed.

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

That progress be reported and the Committee have leave to sit again.

I do this because we need to look at two points that have been raised. One relates to the category of licence and whether there needs to be another category separating out .22 rifles from air guns and, secondly, there is the issue raised by the Hon. Mr Dunn about the purchase of ammunition. I undertake to have those two matters examined and will use the schedule—given the indulgence that has been granted to honourable members during the Committee passage of this Bill—to report back on my findings on those matters and if need be we will move to recommit the relevant clauses.

Progress reported; Committee to sit again.

HARBORS AND NAVIGATION BILL

In Committee.

Clause 1—'Short title.'

The Hon. BARBARA WIESE: When this matter was last considered I was not quick enough to take the opportunity to speak in the second reading debate, and I should like to use this opportunity to place on record some responses to some of the issues that were raised by members during that debate. The Hon. Ms Laidlaw, the Hon. Mr Griffin and the Hon. Mr Elliott raised concerns about the proposed regulations which will accompany this legislation. There were varying degrees of concern about this matter and I want to indicate what has been happening with it.

The Department of Marine and Harbors circulated the draft Harbors and Navigation Bill for comment on 5 August 1992 to Government departments, commercial and recreational user groups and interested parties. Attached to the draft Bill was a paper outlining intended regulations under the proposed Harbors and Navigation Act in which it was stated that existing regulations under the Harbors, Marine and Boating Acts were to be reviewed and, although the contents of the regulations were expected to be subject to slight change only, some consolidation would occur and result in fewer sets of regulations under a single Act.

I have a copy of the paper that was prepared at that time and circulated to those user groups which I shall be happy to provide to the Hon. Ms Laidlaw and the Hon. Mr Elliott for their perusal so they can see the points I am making are as outlined in the paper that was circulated to the relevant bodies. The subjects to be covered by the proposed regulations were outlined and any significant changes to present regulations under existing Acts highlighted. It was pointed out that most of the existing regulations had been updated recently—for example, qualification and crewing, survey equipment and loadline, regulations for preventing collisions at sea, River Murray and inland water navigation, port pricing section of the harbors and wharves regulations and fishing haven and zoning regulations—and would be adopted with virtually no change to their content under the proposed Harbors and Navigation Act.

Following discussions with Parliamentary Counsel in January this year it was suggested that a single set of consolidated regulations may be appropriate. Cabinet approval was granted and it is anticipated that the draft regulations will be prepared within six months. The department anticipates that both the Harbors and

Navigation Act and the regulations will be operable by September 1993, as long as there is no delay in the passage of the legislation.

Regular meetings are taking place between the Boating Industry Association of South Australia and the Department of Marine and Harbors to consider proposals such as the carriage of emergency position—indicating radio beacons and for recreational boats the carriage of marine band radios. Also being discussed is the content of proposed regulations for the hire and drive industry. It is desirable for the legislation to pass as soon as practicable this year because three sets of existing regulations will expire in 1994 and would require remaking should there be any unexpected delay in the passage of the legislation.

The Hon. Ms Laidlaw and the Hon. Mr Griffin also raised concerns about the definition of 'vessel' as contained in the Bill. I can indicate that the definition of 'vessel', as stated by the Hon. Ms Laidlaw, has been broadened and now includes all types of marine craft and devices. If the term 'device' is taken literally, it could include such things as boogie boards, water wings and life jackets. However, the intention of including 'device' within the definition of 'vessel' was to ensure that such things as windsurfers, water skis, inner tubes and hot dogs were included under the broad definition of 'vessel'.

The Hon. Diana Laidlaw: What is a hot dog?

The Hon. BARBARA WIESE: I am not sure. This is particularly relevant when policing and controlling the activities of this class of vessels, especially within controlled and zoned areas where their use is banned or restricted. Many of the local councils within the State have areas which are zoned and policed by authorised council inspectors to ensure the safety of all when pursuing various aquatic activities. Classes of vessels, however, will be prescribed in the appropriate regulations for different applications. A further reason for broadening the definition of 'vessel' was to allow floating establishments, such as the dangerous reef viewing platform, to be classified as vessels, allowing them to fall within the requirements of the survey, equipment and loadline regulations. This would eliminate the need for two sets of regulations which contain similar provisions.

The Hon. Ms Laidlaw and the Hon. Mr Griffin also raised questions relating to the imposition of fees and charges in respect of certain devices. My response is as follows. Part 5, Division 3, deals with the fees and charges which may be prescribed by the Minister for the use of harbor facilities provided under the Bill and for entry of vessels into a harbor or other specified parts of the jurisdiction. The harbors to which this part applies are listed in schedule 1. The suggestion that fees and charges may be imposed for the mooring of such devices as boogie boards, life jackets and water wings is not relevant as the liability to pay a harbor services charge of which mooring is a component is not applicable to vessels used solely for pleasure and not engaged in trade or the conveyance of passengers for hire or for vessels under 40 tonnes gross. The same applies to the liability to pay a navigation services charge. The harbor services charge and navigation services charge referred to are part of the Department of Marine and Harbors pricing policy contained within the regulations under the Harbors Act 1936 and, along with the cargo services charge, it is proposed that such fees be fixed by the Minister to enable the department to react quickly to customer and market needs.

These charges only relate to the commercial operation of harbors in South Australia. All other fees and charges which are presently fixed by regulation will continue to be fixed by regulation. Section 90(2)(ac) states that the Governor may make regulations to fix fees to be paid in respect of any matter under this Act and regulate the recovery, waiving or reduction of such fees.

The Hon. Ms Laidlaw sought clarification regarding the method to be adopted to enforce the provisions relating to breath testing. Under the proposed Harbors and Navigation Act:

> ...an authorised person may require any person -
>
> (a) who is operating or has operated a vessel within the preceding two hours or (b) who is or was a member of the crew of a vessel that is being operated or has been operated within the preceding period of two hours and who is or was or ought to have been engaged in duties affecting the safe operation of the vessel to submit to an alcotest or a breath analysis.
>
> An authorised person means a person authorised under part II of the Bill or a member of the Police Force.

The Department of Marine and Harbors has no intention to either authorise or train its own officers to do this specialised work and confirms that breath testing will be conducted by members of the Police Force as and when required. When suitable people become authorised by the CEO to perform various functions under the proposed Harbors and Navigation Act, they must be issued with an identity card which will contain a photograph of the authorised person and will state any conditions of the appointment limiting the authorised person's authority.

Questions were also raised about whether this Bill binds the Crown. Parliamentary Counsel advises that if it is not specifically stated that the Act binds the Crown, as is the case in the proposed Harbors and Navigation Act, then by virtue of the provisions contained within the Acts Interpretation Act, the Crown is automatically bound.

Some questions were raised relating to whether or not the Commonwealth Act provides all the powers necessary for the Court of Marine Inquiry. The Magistrates Court provides all the necessary powers for a Court of Marine Inquiry. The proposed Harbors and Navigation Act states, in part 12, division 1:

> The Magistrates Court is constituted the Court of Marine Inquiry for the purposes of this Act.

Any rules of the Court of Marine Inquiry would be made under the powers of the Magistrates Court. There are presently in existence rules of the Court of Marine Inquiry which were gazetted in 1936. Regulations to do with the appointment of expert assessors for the purpose of constituting a Court of Marine Inquiry will be made under the provisions contained in the proposed Harbors and Navigation Act. Section 76(4) of the Bill states:

> Whenever the Magistrates Court is to sit as the Court of Marine Inquiry, two assessors will be chosen in accordance with the regulations to sit with the Court.

The Hon. Ms Laidlaw raised a number of concerns regarding clause 14, which addresses the vesting of Crown property, and clause 17, which addresses the care, control and management of property. These clauses

are derived from section 44 of the Harbors Act 1936. The Hon. Ms Laidlaw specifically referred to claims that people in the South-East are concerned about the way in which the Government has given away land, particularly along the Coorong, to the National Parks and Wildlife Service. I think she indicated that people had subsequently been prosecuted for fishing from the beach because the department claimed that it now has claim to everything below the high water mark.

The Hon. Ms Laidlaw further claimed that it would appear, in respect of the land to which she had been referring, that while the Minister may have acted illegally and passed this foreshore land over to the National Parks and Wildlife Service she has in this current Bill almost seemed to be circumventing legal action by making no reference to the foreshore of the sea when it comes to care, control and management of property in division 4.

My response to that claim is that part 3 of the Harbors and Navigation Bill, and in particular division 1, clause 14, and division 4, clause 17, were inserted to maintain the interests of the Minister of Transport Development in the foreshore of the State and is, in effect, a carryover of the provisions contained in the Harbors Act 1936. These clauses have been reworded to cater for the change in language and terms used in the Harbors Act to simplify its interpretation.

Clauses 14 and 17 should be read in conjunction with clauses 14 to 20 of the Bill, as they all relate to property vested in or held by the Minister. These clauses reduce the multiplicity of previous clauses dealing with property of the Minister and seek to simplify administrative procedures and controls accordingly.

The term 'foreshore', defined in section 44(2) of the existing Harbors Act, has been expanded and termed 'adjacent land' in the Harbors and Navigation Bill. 'Adjacent land' is defined in part 1, clause 4, of the Bill, and means:

(a) land extending from the low water mark on the seashore to the nearest road or section boundary, or to a distance of 50 metres from high water mark (whichever is the lesser distance); or

(b) land extending from the edge of any other navigable waterway or body of water in the State to the nearest section boundary or for a distance of 50 metres (whichever is the lesser);

(but does not include land vested in fee simple in any person other than the Minister or land withdrawn from the Minister under the transitional provisions).

Clause 14 vests adjacent land, amongst other things, in the Minister, while clause 17 provides a mechanism by which the Minister can control those lands. Both clauses are limited in their application, in so far as areas no longer under the control of the Minister are concerned, namely, areas now proclaimed as parts of reserves under the National Parks and Wildlife Act or already granted in fee simple by the Crown.

The purpose of the clauses within the new Bill serves for no other purpose than to identify what is regarded as being under the vested control of the Minister of Transport Development as from the promulgation of the Bill.

The Department of Marine and Harbors has no knowledge of a prosecution relating to persons fishing from beaches and is advised by the National Parks and Wildlife Service that it is unaware of any prosecutions resulting from this activity. I am further advised by the National Parks and Wildlife Service that a prosecution may have occurred for riding an unregistered motorcycle along a foreshore area.

The Hon. Mr Griffin referred to the licensing of pilots in clause 32 and the pilotage exemption certificate. Under that provision the CEO may issue a pilotage exemption certificate to the master of a vessel in accordance with the regulations. The Hon. Mr Griffin commented that this may not be so bad, but at least we ought to have some idea as to what sort of issues the Government is proposing to encompass within those regulations.

The most significant difference between the provisions of the existing Harbors Act and the proposed Harbors and Navigation Act with regard to licensing of pilots is that the CEO may now licence suitably qualified persons as pilots, whereas in the past pilots had to be employees of the Government. Some of the major ports around Australia now employ private pilots, as opposed to Government pilots, and this clause in the new Bill enables that to occur in South Australia if thought desirable in the future.

It is intended that the regulations relating to obtaining a pilotage exemption certificate are to be modelled on the recommendations made by the Australian Association of Port and Marine Authorities on the subject of pilotage exemptions. The department believes that this will ensure that a uniform approach is adopted throughout Australian ports regarding the size of vessels whose masters are eligible to use pilotage exemption certificates and the number of voyages and standard of examination required to obtain them.

The Hon. Mr Griffin was interested to have some explanation about the scope of the liability upon a person, particularly in the light of the penalty that is imposed with respect to part 11, 'Accidents', clause 75. Clause 75 provides that:

Assistance is to be rendered

(1) If an accident occurs in the jurisdiction resulting in –

(a) loss of life or personal injury or possible loss of life or personal injury; or

(b) damage to a vessel or possible damage to a vessel,

it is the duty of a person who is in a position to do so to take any action that is reasonably practicable in the circumstances to prevent or minimise the loss, injury or damage.

(2) If an accident occurs involving a vessel, it is the duty of the person who was in charge of the vessel at the time of the accident to inform any person injured in the accident and the owner of any property damaged in the accident of his or her name and address and of the registration number of the vessel.

(3) A person who fails to discharge a duty imposed by subsection (1) is guilty of an offence.

Penalty: Division 8 fine (maximum fine $1 000 or maximum imprisonment three months).

This penalty is applicable only to subsection (1) if an offence is committed and it is proved that a person did not take any action that is reasonably practicable in the circumstances to prevent or minimise loss, injury or

damage. An example of the type of accident where assistance is to be rendered would be a collision between vessels where people may be injured and the vessels are in danger of sinking. Mariners are also obliged to acknowledge and assist if reasonably practicable the sighting of vessels in distress or a distress signal. Similar provisions in the Commonwealth Navigation Act regarding the obligation to render assistance attract penalties of up to $10 000 or imprisonment for four years or both for failing to render assistance and $20 000 or imprisonment for 10 years or both for failing to render assistance after being requisitioned to do so.

The Hon. Ms Laidlaw raised questions regarding beacons near the Murray Mouth and the Coorong. Approximately three years ago, the Department of Marine and Harbors repaired and refurbished all navigational beacons from the mouth of the Murray River to Lake Alexandrina. This included equipping the beacons with new reflectorised top marks. These beacons are still in relatively good condition and are repaired as required using the limited funds available from the department's recreational boating services program. The beacons from the mouth of the River Murray, down the Coorong to Tuawitchere, are in poor condition and some no longer mark the edges of the navigable channel. This has occurred partly because of sand bars moving, the entrance to the River Murray changing location over the years, the relatively low volume of traffic navigating this area and, accordingly, the lower priority given to a beacon replacement project when allocating funds from the department's recreational boating services program. To re-mark this channel would involve driving about 12 new piles at a cost of approximately $40 000.

The Hon. Diana Laidlaw: As this is a departmental statutory responsibility, my concern is that if your boat is damaged because you took notice of the beacons, would the Government be liable for the cost?

The Hon. BARBARA WIESE: I do not know. I will seek information about that matter and let the honourable member know. The Hon. Ms Laidlaw also raised questions about the report prepared by the Government Management Board concerning the operations of the Department of Marine and Harbors. She indicated that matters may be contained in that report that should be taken into consideration in the drafting of this legislation, particularly with respect to a rumour that she had heard that the report contained a recommendation that a maritime services board should be established to assist with the administration of the Department of Marine and Harbors.

I have made some inquiries about the Government Management Board's report, and I have been informed that it has been completed but has not yet been presented to the appropriate Minister, who happens to be the Premier. I am informed that it does not contain any proposals for the establishment of a maritime services board such as exists in New South Wales and Victoria. I also understand that the report concludes that an advisory body would bring benefits to the department by increasing the amount of commercial knowledge and experience available to the department.

There is already a South Australian Ports Liaison Advisory Committee. The terms of reference of this committee, which has an advisory role only, already embrace commercial and operational issues. However, there is no proposal in the report that this advisory body should be involved in the management and administration of the department's activities. When the report is available and I have had the opportunity to examine any recommendations contained in it, I will take heed of any suggestions that may be of assistance in improving the management of the Department of Marine and Harbors, but my judgment is based on information that has been provided to me thus far that there is nothing in the Government Management Board's report that should affect the composition of the legislation before us.

The Hon. Ms Laidlaw indicated that the present Boating Act provides specifically that a motor boat licence examination may be in either oral, written or practical form and that there is no reference in the Bill as to the manner in which an examination may be conducted. The Government does not propose to change the current examination arrangements, and either written, oral or practical examinations or a combination of these will continue, as is the case.

A query was also raised about the fact that there is no specific statement in the Bill to the effect that a motor boat licence will continue without renewal. Again, the fact that a licence does not need to be renewed is not spelt out in the Bill, but that does not mean that the Government has a hidden agenda. The Government has no intention of introducing renewable boat licences either now or in the foreseeable future.

The Hon. Ms Laidlaw claims, concerning the proposed facilities fees, that the Government has been cheating people who are interested in boats out of the money they are already paying in fuel franchise fees and boat registration fees and that not one of those dollars is returned to the boating fraternity of the State. The fact is that the present Boating Act provides that all boat registration and licence revenue is to be used only to finance the Government's boating safety programs. These special funding arrangements have been preserved in this Bill.

Contrary to the Opposition's claims, every cent of boat registration and licence revenue collected is returned to the boating community through boat registration licensing and advisory services, safety publications and the marine safety officers who patrol our waters. This will continue to be the case in the future, and the claims that these charges are simply being used as a revenue raiser for the State are false.

The Hon. Ms Laidlaw asked what the relationship will be between the present boating fund and revenue collected by way of a facilities fee. Revenue collected through the proposed recreational boating facilities fee will be subject to the same special funding arrangements that apply to registration and licence revenue. It will be used solely to provide and maintain recreational boating facilities in this State.

The Hon. Ms Laidlaw asks why the Government does not insist on the identification of boats when they are registered as a means of reducing the theft of boats. The simple reason is that other than by way of the registration number issued by the Department of Marine and Harbors boats sold in this State currently do not have a unique identification number. Some boat manufacturers issue a simple two or three digit hull serial

number to keep track of stock, but as other boat manufacturers use an identical approach there is considerable duplication of hull serial numbers. Consequently, it is often impossible, other than by the registration number issued by the department, to tell one boat from any number of other boats of the same size and general appearance.

Certainly, at the time a boat is presented for initial registration it has no unique identification which officers of the department, or anyone else for that matter, could use to verify that the boat has not been previously registered.

Motor vehicles have for some years been issued with a vehicle identification number or unique chassis number during manufacture, which gives each vehicle a unique and permanent identity. Introduction of a similar hull identification number for boats is fundamental to solving problems associated with stolen boats, and the department in conjunction with other State marine authorities and the Boating Industry Association is presently working towards this at a national level. Introduction of such a scheme will of course require the cooperation of the boating industry. As the industry has made numerous representations to both the Government and Opposition on the need to take action to address the problem of boat theft, I do not foresee any difficulties in obtaining the industry's support for this initiative.

The Hon. Ms Laidlaw and the Hon. Mr Dunn raised concerns about the decline in the condition and standard of navigational aids, beacons, buoys, lights and signals. The Department of Marine and Harbors is presently engaged in a program of converting all gas powered navigation lights to solar operations. This conversion program, due for completion in 1995, is costing $5 million. Included in the conversion program is a thorough inspection of each beacon, structure or buoy with any repairs found necessary being carried out at the time of light conversion. I acknowledge that the old light structure at Cowell has fallen over, but that a temporary light has been established pending replacement of the pile structure. The Department of Marine and Harbors is sensitive to the necessity to maintain navigation aids in serviceable condition even though in many parts of the State vessels make only spasmodic use of these aids.

The Hon. Ms Laidlaw referred to problems being experienced by traders and businesses with Government policy, and cites the South Australian Cooperative Bulk Handling submission to the recent Industries Commission Into Port Authority Services as an example. Specifically, she cites possible difficulties in SACBH obtaining freehold title to land presently leased from the Department of Marine and Harbors, and DMH involvement in the handling of grain which it is alleged reduces efficiency and competitive advantage in the export of grain.

On the matter of securing freehold title to land presently leased, I appreciate the aspirations that have been expressed by SACBH. As the Hon. Ms Laidlaw has pointed out, this organisation has been negotiating with the Department of Marine and Harbors to secure freehold land, and those negotiations are continuing. It is true that it may be difficult for SACBH to secure freehold title to some sites, and in particular sites where the leasehold extends into the foreshore zone. Section 5aa (2) of the Crown Lands Act prevents the granting of freehold title over the foreshore.

On the matter of DMH involvement in the handling of grain I am aware that SACBH is anxious to obtain ownership and responsibility of the various bulk plants. SACBH claim, although this has not been quantified, that there could be savings in both labour and management resources with the bulk plants under their ownership. They make no reference to the attitudes of the Australian Wheat Board and the Australian Barley Board to their proposed ownership and operation of the bulk plants. The principal commodity handled at Thevenard is gypsum. The consequences of SACBH ownership of that plant need to be considered against the aspirations of the gypsum exporters from that port, one of which has also expressed the desire to obtain ownership of that plant.

I believe that SACBH needs to be more specific in their quest for ownership of these plants and be prepared to demonstrate a compelling case that they can equally or better serve the bulk commodity shippers from these ports including bulk products not presently shipped. Neither SACBH nor DMH own the grain. They are both service providers. As SACBH has been established by statute it enjoys a monopoly position not totally held by DMH. For example, grain is shipped through the private port of Ardrossan. DMH could well mount the argument that it should operate terminal silos in conjunction with the bulk loading plants, and make similar savings to that claimed by SACBH, as occurs for example in the port of Montreal in Canada where the port authority owns the terminal silos and loading plants in competition with other privately owned facilities in other ports in the region.

The Hon. Mr Elliott observed a lack of communication between the Department of Marine and Harbors and the Department of Primary Industries in relation to fishing industry matters, citing the proposed closure of the Port MacDonnell slipway as an example. He is suggesting that a committee with a policy focus be established comprising fishing industry representatives, the Department of Primary Industries and the Department of Marine and Harbors. I am happy to explore this idea although in doing so I would point out that when the Fishing Industry Panel was established in the 1970s the membership comprised representatives from the fishing industry, the Department of Marine and Harbors and the Department of Fisheries. In 1985 the Department of Fisheries withdrew from the panel because it was considered there were few issues of relevance to that agency.

It is also relevant to note that consideration is presently being given to options for alternative management of the State's fishing industry facilities, and this may well enhance industry communication overall. As I indicated I am prepared to explore the idea that he has put forward more fully, and if there are some real advantages to be gained by creating better communication in this way I will be very pleased to initiate such action.

I think that covers the majority of the issues that were raised by honourable members during the second reading debate. I understand that members would like the opportunity to examine the comments that I have made before the Committee stage proceeds further.

Progress reported; Committee to sit again.

PUBLIC FINANCE AND AUDIT (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 17 February. Page 1296.)

The Hon. L.H. DAVIS: When I spoke earlier on this Bill to amend the Public Finance and Audit Act I did say that the Liberal Party generally supported the amendments proposed by the Government. The principal Act introduced into the Parliament in 1987 has generally stood the test of time. I reiterate, however, that legislation is no sinecure to proper financial and administrative management, and this State has been found wanting under the leadership of the Labor Government in respect of administrative and financial management over the last few years. I did say that, with respect to clause 15 (amending section 32 of the principal Act), as the amendment read, the Auditor-General could examine the accounts of a publicly funded body and examine the efficiency and economy with which the body conducts its affairs, if requested by the Treasurer. A malicious Treasurer in a government under attack—and I suppose one could reflect on this current Government as a government under extraordinary pressure—could overwhelm the Auditor-General with recommendations to examine the efficiency and economy of a publicly funded body and leave the Auditor-General distracted from other issues of a more pressing nature. That is always a risk.

I do not for one moment suggest that the current Treasurer is malicious in any way. I think that would be unfair on the honourable member. But I do have that concern and one of the questions I will be asking the Attorney-General in the Committee stage is to give an assurance, at least to this Chamber, that the Auditor-General is going to have sufficient resources to undertake the examination of publicly funded bodies requested by the Treasurer.

I did flag that, in addition to what I think is a worthwhile amendment, either House of Parliament should be given the ability to refer, by a resolution, to the Auditor-General for examination of the accounts of a publicly funded body. The Auditor-General reports but once a year. Certainly, the Economic and Finance Committee recently established, sadly comprised only of membership from another place, does have some quasi auditing functions, in the sense that since its establishment nearly 12 months ago it has highlighted some defects in administration and financial arrangements in some of the major statutory authorities in Adelaide. But I do not think it would be inappropriate for the Government to consider the amendment that I suggested, namely, that a resolution of either House of Parliament could refer the accounts of a publicly funded body to the Auditor-General for examination.

The amendment to section 33 'Audit of other accounts' is a major amendment by any stretch of the imagination. We have a situation envisaged by the Government where the Auditor-General can audit the books of a company which *per se* may not necessarily be a public authority as we would understand it in normal language, and the amendment proposed, section 33(3), which I will read, makes that clear:

> Where a public authority is the legal or the beneficial owner of shares in a company and the company, or a subsidiary of the company, is the instrument used by the public authority to carry out some or all of its functions, the Auditor-General may audit the accounts of—
>
> (a) the company in which the public authority owns shares;

The Auditor-General may audit the accounts of the subsidiary of the company and any companies in a chain of subsequent companies which have a relationship with that first company. Let us say that we have the situation of the State Government Insurance Commission owning, for example, a 40 per cent interest in a major public company. We can, for instance, take Health and Life Care, a real living example—although it is perhaps inaccurate to call it 'living' since it is recently deceased, and one of many lamentable investments made by the SGIC over recent years. I take it that my interpretation is correct that if SGIC held but 25 per cent, for example, of the shares in Health and Life Care and was using Health and Life Care as an instrument to carry out some or all of its functions, namely, the provision of health services which was an adjunct to the insurance and health insurance services provided by the SGIC that, indeed, the Auditor-General could audit the books of Health and Life Care and could audit subsidiaries of Health and Life Care and any other related companies.

The Hon. C.J. Sumner: That is right.

The Hon. L.H. DAVIS: The Attorney is kind enough to agree with that proposition. It means of course that, in addition to the audit provisions of corporations law, the company will be audited by the Auditor-General irrespective of whether or not the company and its independent auditors comply with corporations law. I am not saying that that is a bad thing, but the point is really that many of the problems that emerged in SGIC, for example, were simply because the Auditor-General did not have access to some of the subsidiary companies that SGIC ran: the Darwin private hospital, the Collins Street properties, the SGIC hospitals, the magnificent Bouvet Pry Limited, owner of the Terrace Hotel. So, the Auditor-General was schizophrenic when it came to SGIC, because there were some that he could audit and there were others he was unable to audit.

I accept that this Act at least enables the Auditor-General to hold up an umbrella over all those companies and, indeed, others. I presume that any audit fees that are incurred, any audit under these amendments if passed, will be picked up by the Auditor-General and will not incur any expense on the company being audited. That is something on which I would like some assurance. It is quite clear, then, that section 33(3) does give the Auditor-General a power to audit a company in which a public authority owns shares, even though that company itself is a company that we would understand to be in the private sector.

That is a pretty far reaching power. And under subsection (4) the Auditor-General is able to examine the efficiency and economy with which the company carries out those functions. That means that the Auditor-General can go into the books of Health and Life Care, and it could be a company listed on the Australian Stock Exchange and, again, I think I am right in saying that the Auditor-General can examine the accounts of a company

listed on the Stock Exchange of Adelaide in which SGIC had a major interest.

In the case of, for instance, F.H. Faulding, in which SGIC had a major interest and which, sadly, has been watered right down at a cost of millions of dollars of lost potential profits to SGIC, it could well be argued that the instrument used by SGIC to carry out some of its functions was a special deal with Faulding, perhaps to provide a discount on its medicinal products to SGIC hospitals. It could be argued that that was trapped by that definition. I would be interested to know from the Attorney-General whether that means that the Auditor-General can go in and audit the accounts of F.H. Faulding and examine the efficiency and economy with which the company carries out those functions. I do not think I am stretching a long bow in arguing that point because I think, as the section is worded, it is quite capable of being construed in that fashion.

The Hon. C.J. Sumner: It is not intended.

The Hon. L.H. DAVIS: It may not be intended, but I think it could be construed that way. Subsection (5) provides that for the purposes of subsection (3) a company is the holding company of another if it is the legal or beneficial owner of shares, a company is the subsidiary of another company, and then the group of companies, and I understand that point. But then there is another angle to the Auditor-General's proposed powers under subsection (6) which provides:

> The Auditor-General may audit the accounts of a company and examine the efficiency and economy with which it conducts its affairs if—
>
> (a) a public authority is the legal or beneficial owner of more than the prescribed percentage of the issued share capital of the company;
>
> and
>
> (b) the Treasurer has given his or her consent to the audit and examination;.

Subsection (8) provides:

> For the purposes of subsection (6) the prescribed percentage is 50 per cent or such other percentage as is prescribed by regulation.

Those powers, I take it, are in addition to the powers set down in subsection (3). It means that you do not have to justify that the company is the instrument used by the public authority to carry out some or all of its functions. As long as the public authority is the legal or beneficial owner of more than a prescribed percentage of the issued share capital of the company, then the Auditor-General can go in and examine the books. That is quite clear: there is no *caveat* on that. As long as they hold a prescribed percentage of the issued capital of the company, the Auditor-General can audit the accounts for efficiency and economy.

If that prescribed percentage is, say, as prescribed by regulation, and there is no guarantee it could not be dropped to 20 per cent, it would mean, again, that under this provision the Auditor-General would have the power to look at SA Brewing or F.H. Faulding where at some stages SGIC, for example, owned very close to 20 per cent. I know I am stretching a long bow and it is a fanciful argument, but there is nothing to stop an Auditor-General doing that. What concerns the Liberal Party is that, by leaving to regulation what the prescribed percentage might be, it really does open up the floodgates and leave things to chance far too much.

With a matter like this I think there should be some certainty, and I am suggesting that we should leave out the prescribed percentage and insert 50 per cent, because I would argue, Mr Attorney, that if you are concerned that SGIC was using a company to carry out some of its functions, a company that requires scrutiny, that will be trapped under subsection (3) because there is no limit at all to the prescribed percentage, the percentage that can be held.

But under subsection (6), surely, you are contemplating a more passive arrangement, where SGIC may hold shares in a company. It is inconceivable to think of a public authority owning, say, 50 per cent of the shares in something and not having that ownership as an instrument used by that public authority to carry out some or all of its functions. I cannot think of an example offhand and I would be interested to know whether the Attorney can.

For example, some years ago the Gas Company owned .4 per cent, I think it was, of the Pipelines Authority. That is not a good example, because the Auditor-General could go in and examine the Pipelines Authority anyway. But I am hard pressed to think of an example where any concerns that you might have under subsection (6) were not picked up and covered adequately by the proposed provision of subsection (3).

Therefore, I think it would be much more satisfactory and that it would introduce much more certainty in the legislation if subsection (6) was amended to prescribe the percentage being a minimum 50%. Of course, that would mean a subsequent amendment to delete subsection (8). The Liberal Party has amendments to cover those points that I have raised, but generally we find satisfaction with the legislation, although certainly there will be questions in the Committee stage.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Special Deposit Accounts.'

The Hon. L.H. DAVIS: I have a question regarding the utilisation of cash surpluses in special deposit accounts. Treasury is obviously wishing to use the surplus cash within the public sector and I believe that they could reduce funds from Consolidated Account when special deposit accounts are in surplus to achieve the same result. Could the Attorney-General advise if that is correct?

The Hon. C.J. SUMNER: The clause, believe it or not, says what it means. The objective of it is to enable moneys that are held in special deposit accounts, which is a system operated for Government agencies, which maybe in surplus and significantly in surplus to be available for crediting to Consolidated Account and therefore used in other priorities that the Government might have.

The Hon. L.H. DAVIS: Is the purpose of the clause to introduce some flexibility and some management of financial surpluses? I accept that it is part of the general approach in State Governments around Australia to try to better manage the shrinking financial resources, to maximise interest rates, to maximise their use, instead of having these resources sitting idle, and I realise that we

are long past the days of hollow logs, that we are into red ink territory.

The Hon. I. Gilfillan: The point is that the 'hollow logs' are now hollow.

The Hon. L.H. DAVIS: The honourable member makes an excellent point: the hollow logs really are hollow. I accept the virtue of the proposed amendment. I am saying that I sense there is a potential vice here, that the Treasurer can direct at any time that a cash surplus accruing in a special deposit account can be creamed off into consolidated revenue. I guess that although budget streams can be fairly accurately calculated you may have an unexpected turnaround. A surplus built up and then creamed off may suddenly leave the department concerned in a difficult situation where in fact it may be forced to borrow, forced to go into overdraft, because that surplus is no longer there. Does the Attorney concede that as a possibility and, if so, what mechanisms exist for the department either to retrieve funds or to go

into overdraft to meet its funding needs?

The Hon. C.J. SUMNER: The special deposit accounts are not allowed to go into overdraft and in some circumstances where money has been appropriated to a department and not used then it has to be returned to the Consolidated Account.

The Hon. L.H. DAVIS: Does the Government have any intention of making public at any stage, through its own reporting or through a requirement of the Auditor-General, that any surpluses that are removed pursuant to clause 4 would be reported upon to the Parliament? Would the Attorney-General or the Government entertain the idea that amounts over a certain figure perhaps should be reported on an annual basis?

The Hon. C.J. SUMNER: I am advised that it would be reported on in the normal way as part of the budget papers and in the Auditor-General's Report.

Clause passed.

Clause 5—'Imprest Accounts.'

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

Page 2, lines 33 and 34—Leave out these lines and insert:

5. Section 9 of the principal Act is amended by inserting after 'appropriated' in subsection 4 'or set aside'.

This amendment is moved in response to a concern expressed by Mr Stephen Baker, the member for Mitcham, in another place. The effect of the amendment to section 9 of the principal Act made by clause 5 of the Bill is that the money used to recoup an imprest account need not be money appropriated for the purpose for which money was expended from the imprest account. This gives much needed flexibility in this area but the member for Mitcham has objected that it is too open-ended. The words added by this amendment maintain sufficient flexibility but restrict the source of money for the purpose of recouping imprest accounts.

The Hon. L.H. DAVIS: I indicate that the Liberal Party supports this amendment.

Amendment carried; clause as amended passed.

Clause 6—'Amendment of section 15—Appropriation by Treasurer for additional salaries, wages, etc.'

The Hon. L.H. DAVIS: The amendment to section 15 of the principal Act is to amend 'salaries or wages' by substituting 'salaries, wages or allowances'. I was generally satisfied with the explanation in the second reading debate. However, can the Attorney-General explain whether it is indicating that any adjustments as a result of decisions by relevant tribunals to allowances cannot then be passed on by the Treasurer? Are there no provisions within existing legislation that provide for these increases in allowances to be funded by the Treasurer? Is there no existing mechanism for this, or is this just an exercise in legislative safety?

The Hon. C.J. SUMNER: I think it is tidier to have allowances included with 'salaries and wages' for the sake of ensuring that all matters that might be awarded or agreed by a tribunal, whether expressed as salaries, wages or allowances, are appropriated by section 15.

The Hon. L.H. DAVIS: Is the Attorney-General satisfied that the word 'allowances' is broad enough to cover any other item?

The Hon. C.J. SUMNER: Yes.

Clause passed.

Clause 7—'Amendment of section 16—Power to borrow.'

The Hon. L.H. DAVIS: I understand that we are seeking here to extend the power of the Treasurer to borrow money by way of overdraft not only as prescribed in the annual Appropriation Act, but also, in addition, by the Supply Act. About two years ago the overdraft limit was increased from $20 million to $50 million, according to my advice. Could the Attorney-General confirm that point?

The Hon. C.J. SUMNER: Yes.

The Hon. L.H. DAVIS: Whilst the reason for such a change was, 'We can always review and debate this matter in another place in Estimates for the Appropriation Act,' that ability may be more difficult in relation to the Supply Bill. In a sense we are perhaps reducing accountability to Parliament. Whilst I accept that it provides greater flexibility with regard to budget allocations and more opportunities to vary the overdraft or borrowing under which they are currently operating, could the Attorney advise whether this practice is common in all other States? If the Attorney does not have an answer now, perhaps he would provide it in writing.

The Hon. C.J. SUMNER: Basically, it is to give greater flexibility. It still has to come to Parliament in one form or another either annually in the Appropriation Act or in one of the Supply Acts that have been introduced. Neither my officers nor I can answer whether it applies in other jurisdictions. However, I will ask the responsible Minister for an answer to that question in due course.

Clause passed.

Clauses 8 to 10 passed.

Clause 11—'Amendment of section 19—Guarantees and indemnities.'

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

Page 5, after line 33—Insert paragraph as follows:

(c) by striking out subsection (5) and substituting the following subsection:

(5) This section—

(a) applies in addition to the provisions of any other Act relating to guarantees and indemnities for the benefit of a body corporate that is a semi-government authority;

(b) does not operate to exclude or diminish obligations of the Treasurer under any other Act or law.

The purpose of the amendment is to make it clear that the guarantee provision (section 19) of the Public Finance and Audit Act applies to a semi-government authority that is also a public corporation under the Public Corporations Bill. The Public Corporations Bill provides for standing guarantees by the Treasurer for public corporations and it is important to ensure that section 19 of the Public Finance and Audit Act applies in addition to that provision.

The Hon. L.H. DAVIS: The Liberal Party accepts the amendment.

Amendment carried; clause as amended passed.

Clauses 12 to 14 passed.

Progress reported; Committee to sit again.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

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

The Hon. BARBARA WIESE (Minister of Transport Development): 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

It seeks to implement the legislative recommendations of the Select Committee into the Law and Practice Relating to Death and Dying.

The objects of the Bill are threefold:

(a) to make certain reforms to the law relating to consent to medical treatment to allow persons over the age of 16 years to decide freely for themselves on an informed basis whether or not to undergo medical treatment and to provide for the administration of emergency medical treatment, in certain circumstances, without consent;

(b) to provide for medical powers of attorney under which those who wish to do so may appoint agents to make decisions about their medical treatment when they are unable to make such decisions for themselves;

(c) to allow for the provision of palliative care, in accordance with proper standards, to the dying and to protect the dying from medical treatment that is intrusive, burdensome and futile.

It is within this framework that the law will operate.

As Hon. Members would be aware, spectacular advances in science and medicine have introduced an era in health care which a short time ago would have been characterised as science fiction. Nonetheless we must all confront our mortality. Healthy lifestyles and modern medicine can do much to postpone death and improve physical well-being during life, but neither exempt us from the inevitable. While we are concerned about dying, we are equally, if not more, concerned with the manner of our dying.

How we die is now very much influenced by modern technology and patient management. Terminally ill people can be kept alive for long periods, even though there may be no prospect of returning to a reasonable quality of life or even, in some cases, consciousness. Such technology can be highly invasive and inconsistent with our beliefs in human dignity. In these circumstances, the family and friends of the patient, and society in general, are faced with a moral dilemma:

- Should every known technique be used to maintain life, whether recovery is possible or not, and at considerable discomfort to the patient and anguish to the friends and relatives of the patient?
- Should there be agreement to a request from the patient that life be terminated painlessly and prematurely so as to avoid the suffering and loss of dignity which can be associated with a slow, lingering death?
- Should the above options be rejected, but every opportunity be taken to maintain the comfort and dignity of the patient as the inevitable approaches?

The Select Committee found virtually no support in the health professions, among theologians, ethicists and carers, or indeed in the wider community, for highly invasive procedures to keep the patient alive, come what may and at any cost to human dignity. Clearly, moral and legal codes which reflect such practices are inappropriate.

However, at the other end of the spectrum, the Select Committee firmly rejected the proposition that the law should be changed to provide the option of medical assistance in dying, or "voluntary euthanasia". Its Report deals at some length with the reasons why it believes the concept of intent, and distinctions based on intent, should be maintained in the law.

The Select Committee endorsed the widely supported concept of good palliative care - that is, measures aimed at maintaining or improving the comfort and dignity of a dying patient, rather than extraordinary or heroic measures, such as medical treatment which the patient finds intrusive, burdensome and futile.

A fundamental principle inherent in such an approach, and indeed, an underlying tenet of the Bill before Hon. Members, is patient autonomy. The concept of the dignity of the individual requires acceptance of the principle that patients can reject unwanted treatment. In this respect, the wishes of the patient should be paramount and conclusive even where some would find their choice personally unacceptable.

The Bill deals with this matter in several ways. Firstly, it essentially restates the provisions of the *Consent to Medical and Dental Procedures Act 1985,* since that Act is to be repealed. That Act provides for the treatment and emergency treatment of children (who are defined as any person under 16 years of age) and adults and those provisions are repeated in identical terms except that the format has been modified to make it more understandable to those who are not legally trained.

The Bill also enshrines the requirement that a medical practitioner must explain the nature, consequences and risks of proposed medical treatment; the likely consequences of not undertaking the treatment; and the alternatives. In other words, the important notion of "informed consent" is maintained. Obviously, this process occurs now as a matter of good medical practice. However, the Committee believed an issue of such importance should be prominently canvassed in the Bill, and provision is made accordingly. Protection from liability is provided for medical practitioners where they act with the appropriate consent or authority; in good faith and without negligence; in accordance with proper standards of medical practice and in order to preserve or improve the quality of life.

The Bill introduces the concept of a medical power of attorney. Clause 7 provides that a person over 16 years of age may appoint a person, by medical power of attorney, to act as his or her agent with power to consent or refuse to consent to medical treatment on his or her behalf where he or she is unable to act. An appointment may be made subject to conditions and

directions stated in the medical power of attorney. The agent must be 18 years old and no person is eligible for appointment if he or she is, directly or indirectly, responsible for any aspect of the person's medical care or treatment in a professional or administrative capacity. A medical power of attorney may provide that if an agent is unable to act, the power may be exercised by another nominated person. However, a medical power of attorney cannot provide for the joint exercise of power.

Clause 8 makes it an offence to induce another to execute a medical power of attorney through the exercise of dishonest or undue influence. A person who is convicted or found guilty of such an offence forfeits any interest in the estate of the person who has been improperly induced to execute the power of attorney.

Hon. Members will recall the *Natural Death Act 1983*. That was pioneering legislation for its time. It confirmed the common law right to refuse treatment, and expanded upon it. It enabled adults of sound mind to determine in advance (by declaration) that they would not consent to the use of extraordinary measures to prolong life in the event of suffering a terminal illness.

The medical agent provisions of this Bill seek to build on to those foundations and to move beyond the limitations of the current Act, in light of experience over time. For example, advances in medical science mean that decisions a person took at the time of completing a *Natural Death Act* declaration may no longer be relevant. Indeed, the person's wishes may have changed over time and he or she may have neglected to change the declaration. The Bill enables a person to appoint an agent who can make decisions regarding medical treatment on behalf of that person. Clearly, a person will choose to appoint as an agent someone with whom there is a close, continuing, personal relationship. People will choose agents who understand their attitudes and preferences and in whom they place trust and confidence.

The medical agent can only act if the person who grants the power is unable to make a decision on his or her own behalf. However, the circumstances are not restricted to terminal illness - the patient may, for instance, be unconscious; the patient may be temporarily or permanently legally unable to make decisions for himself or herself.

The medical agent simply stands in the place of the patient and is empowered to consent or refuse consent in much the same terms as can the patient.

Obviously, the person one selects to be one's agent will be a person in whom substantial trust and confidence resides. It will most likely be a person with whom one moves through life, sharing common experiences and like responses to medical questions. The whole purpose of the medical agent provisions is to give the patient whatever flexibility he or she requires and chooses to take. An agent can be appointed for a specified period; can be given specific instructions; or can be left with a free hand, perhaps with personal or private instructions. The agent must agree to act in accordance with the wishes of the patient insofar as they are known and act at all times in accordance with genuine belief of what is in the best interests of the patient. One action the agent cannot take, however, is to authorise refusal of - the natural provision or natural administration of food and water or the administration of pain or distress relieving drugs. The Committee believed such a refusal requires a level of self-determination which can only be exercised by individuals acting consciously, in all the circumstances, on their own behalf.

The appointment of an agent also removes the uncertainty which can be created by a family situation where several people claim to represent the true wishes of the patient. To whom is the doctor to turn? Such situations are resolved by medical practitioners every day, and will continue to be even after this Bill becomes law, but where an agent is available, the choice is in effect made by the patient, which is the only certain solution.

There is no legal appeal mechanism available against the decision of a patient who grants or refuses consent to medical treatment. In the interests of certainty and good medical practice, it is appropriate that the same situation should apply where an agent is involved. This is not an area in which the law, through the Courts, should have a significant role. These are quality of life decisions, not financial or legal issues, and the best person to determine who should resolve those matters is the person on whose behalf they are being made i.e. the patient. The agent after all only acts through the medical practitioner, unlike a legal power of attorney where agents act as they see fit and therefore are properly and necessarily subject to greater review.

The Bill contains specific provisions which deal with the care of the dying. It should be noted that the prohibition against assisted suicide remains in the *Criminal Law Consolidation Act* (Section 13a). Nothing in this Bill reduces the force either of that prohibition, or of the law against homicide.

What the Bill does seek to ensure is that a medical practitioner responsible for the treatment or care of a patient in the terminal phase of a terminal illness, will not incur liability if he or she acts -

- with the appropriate consent;
- in good faith and without negligence; and
- in accordance with proper professional standards of palliative care

even though an incidental and unintended effect of the treatment is to hasten the death of the patient.

The Select Committee was made aware of the broad community acceptance of measures taken to provide for the comfort of the patient. Drugs designed to relieve pain and distress commonly prolong life, but they may have the incidental effect of accelerating death. The medical profession is understandably concerned about the risk of prosecution, however small that risk may be. The hallmark of a humane society is one which recognises the right to die with dignity, in circumstances which are not needlessly distressing, and as free of pain as medical and scientific knowledge permits. The law should reflect that community attitude.

It should be emphasised, however, that the protection afforded by Clause 13 applies if, and only if, the conditions set out in the Clause are satisfied. The Bill needs to be read in the context of the general criminal law of the State. If the acceleration of death is the intended consequence of the "treatment", then the Bill offers no protection and the person administering the "treatment" would face prosecution for homicide or assisted suicide depending upon the circumstances.

The Bill also makes it clear that, where a patient is in the terminal phase of a terminal illness, with no real prospect of recovery, and in the absence of an express direction to the contrary, a medical practitioner is not under a duty to use, or continue to use, medical treatment that is intrusive, burdensome and futile in order to preserve life at any cost.

The non-application or discontinuance of extraordinary measures in the circumstances defined in the Bill is not a cause of death under the law of the State. This provision ensures that the true cause of death is recorded. For example, a person who

is dying from a gun shot wound must be recorded as having died from the gun shot and not from the withdrawal of the ventilator that was artificially keeping him or her alive. The Bill simply ensures that the real cause of death (that is, the underlying cause of the person's terminal illness) is shown as the actual cause of death. It does not provide medical practitioners with a legal device to avoid the consequences of their negligent actions or with a means to implement euthanasia legally. Any such attempt would lead to prosecution under the criminal law.

The Select Committee has in a sense been both a pathfinder and trailblazer. The scope and complexity of issues before it required consultation with the community in the broadest sense. The law must move at a pace which reflects community attitudes, but it should not be allowed to gather speed and overtake the clearly expressed opinion of the community. It is a matter of balance and the Select Committee believes it has struck the right balance. The Committee's Report lays the foundations for South Australia to be at the forefront of care of the dying. The Bill will help to enhance and protect the dignity of people who are dying and will clarify the responsibilities of doctors who look after them. I commend the Bill to the House.

The provisions of the Bill are as follows:

Clause 1 provides that the short title of the measure is to be the *Consent to Medical Treatment and Palliative Care Act 1993*.

Clause 2 provides for the commencement of the measure.

Clause 3 sets out the objects of the Act.

Clause 4 includes various definitions that are necessary for the purposes of the measure.

Clause 5 provides that the new Act will not apply to medical procedures directed towards research rather than towards therapeutic objects.

Clause 6 provides that a person over 16 years of age may consent to a medical treatment as validly and effectively as an adult. The provision is similar in effect to section 6(1) of the *Consent to Medical and Dental Procedures Act 1985*.

Clause 7 provides that a person over 16 years of age may appoint a person, by medical power of attorney, to act as his or her agent with power to consent or refuse to consent to a medical procedure on his or her behalf where he or she is unable to act himself or herself. An appointment may be made subject to conditions stated in the medical power of attorney. A person is not eligible to be appointed as an agent if he or she has not attained the age of 18 years, or if he or she is responsible for any aspect of the person's medical care or treatment in a professional or administrative capacity. A medical power of attorney may provide that if an agent is unable to act, it may be exercised by another nominated person. However, a medical power of attorney cannot provide for the joint exercise of power. The medical agent must observe any lawful directions included in the power of attorney.

Clause 8 makes it an offence to induce another to execute a medical power of attorney through the exercise of dishonest or undue influence. A person who is convicted or found guilty of such an offence forfeits any interest that the person might otherwise have in the estate of the relevant person.

Clause 9 relates to the medical treatment of children. Provisions of similar effect appear in the *Consent to Medical and Dental Procedures Act 1985*.

Clause 10 relates to the performance of emergency medical treatment. A provision of similar effect appears in the *Consent to Medical and Dental Procedures Act 1985*. If a medical agent has been appointed and is available, a medical procedure cannot be carried out without that agent's consent. If no such medical agent is available but an appointed guardian is available, the guardian's consent is required. Subsection (5) relates to the situation where a parent or guardian refuses consent to a medical procedure to be carried out on a child. A comparison may be drawn with section 6(6)(b) of the *Consent to Medical and Dental Procedures Act 1985*. In such a case the child's health and well-being are paramount.

Clause 11 places a duty on a medical practitioner to give a proper explanation in relation to the carrying out of a proposed medical procedure. This clause sets out the principles of "informed consent".

Clause 12 provides immunity for a medical practitioner who has acted in accordance with an appropriate consent or authority, in good faith and without negligence, in accordance with proper professional standards, and in order to preserve or improve the quality of life. A similar provision appears in the *Consent to Medical and Dental Procedures Act 1985*.

Clause 13 relates to the care of the dying. A medical practitioner will not incur liability by administering medical treatment for the relief of pain or distress if he or she acts with the consent of the patient or of some other person empowered by law to consent, in good faith and without negligence, and in accordance with proper standards of palliative care, even though an incidental effect is to hasten the death of the patient. Furthermore, in the absence of an express direction to the contrary, a medical practitioner is under no duty to use extraordinary measures to treat a patient if to do so would only prolong life in a moribund state without any real prospect of recovery. Subclause (3), relating to the identification of a cause of death, is modelled on a provision of the *Natural Death Act 1983*. Directions as to taking, or not taking, extraordinary measures can only be given by the patient or the patient's medical agent or, if no medical agent is available, by a guardian or, in the case of a child, by a parent.

Schedule 1 sets out the form for a medical power of attorney. The appointed agent will be required to endorse his or her acceptance of the power and undertake to exercise the power honestly, in accordance with any desires of the principal, and in the best interests of the principal. The attorney must be witnessed by an authorised witness (as defined).

Schedule 2 provides for the repeal of the *Natural Death Act 1983* and the Consent *to Medical and Dental Procedures Act 1985*. A direction under the *Natural Death Act 1983* will continue to have effect. Enduring powers of attorney granted before the new measure and purporting to confer relevant powers on the agent can have effect under the new legislation.

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

[Sitting suspended from 5.55 to 7.45 p.m.]

DOG CONTROL (DANGEROUS BREEDS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 February. Page 1222.)

The Hon. BERNICE PFITZNER: I rise to support the Bill. Almost two years ago in a question in this Chamber I raised the issue of dog attacks and I am glad to see that at last a very small step is being taken. I understand and hope that this Bill to amend the Dog Control Act 1979 is the first of other amendments to the

Act which will address the very serious problem of dog attacks. We note the reports of serious dog attacks in papers relatively frequently, whilst many more minor attacks must go unreported.

In January 1991, the Epidemiology Branch of the South Australian Health Commission put out statistics on the rate of dog attacks. Attacks on children amounted to approximately 500 per year, and the highest rate of injury is in the one to four year old age group. Ninety five per cent of hospital admissions were as a result of bites to the head and face. Dog bites are the fifth most prevalent type of childhood accident out of 10 different types of accidents—the most prevalent being injuries on playground equipment and the least prevalent being drowning.

Estimated adult attacks were approximately 1 500, making a total of 2 000 dog attacks per year. If we apply this injury rate nationally, we will have approximately 30 000 people presenting to hospital as a result of dog attacks.

In an article from the Department of Farm Animal Medicine and Production, University of Queensland, in the *Australian Veterinary Journal,* June 1991, it was noted that in St Louis, USA, postal delivery officers were bitten most often. Research into postal delivery officers in Queensland revealed that over a period of five years—1985 to 1989—there was an average of 108.7 attacks, that is, bites and threats, per year, or 2.1 per week. Bites averaged 76.8 per year, or 1.5 per week. Further, it was calculated that dog-related injuries cost Australia Post in Queensland an average of approximately $111 000 per year.

It was also noted in the article that the German Shepherd was the most common breed of attacking dog, followed by large breeds, mixed breeds and poodles. Stray dogs were implicated in only a very small percentage.

However, articles like these need to take into account the make-up of the dog population and the method by which the breed of the dog was recognised. If these two variables are not taken into account, the German Shepherd, as a pure breed, might be wrongly categorised as a breed of dog most frequently implicated in attacks.

We must look into ways and means of reducing and perhaps finally eliminating dog attacks. There are three methods of solving this problem: enforcing dog control measures; dog obedience training; and owner education.

The Dog Control Act 1979 provides most of the necessary dog control measures, but the implementation and monitoring of the Act is not well done by some local councils. Examples of the poor implementation of the Dog Control Act are as follows. A resident reported to the council that a neighbour's dog was chasing her. The local council responded by saying that it would not do anything until the dog actually bit her. The dog finally bit her about two chases later! Section 44 of the Dog Control Act provides:

> If a dog attacks, harasses or chases any person or any animal or bird owned by or in charge of some other person, the person responsible for the control of that dog is guilty of an offence.

Further, another resident was bitten by a dog and when she reported it to the council the officer indicated that she had to supply further information regarding the owner's name, the dog's name, the breed of dog and whether or not the dog was pedigreed. It is to be noted that nowhere in the Act is this information required and that section 44 applies. The present dog officers in local councils also move garbage and attend to European wasps and other miscellaneous duties. Can we then blame them for not being fully informed on the legislation contained in the Dog Control Act?

We must have better methods of implementing, monitoring and therefore enforcing the Dog Control Act. Dog training is another method of minimising the threat of dog attack. Many of us have been strongly lobbied by different canine associations in order to obtain concessions on dog registration. Whilst I do not support concessions given for membership of a canine association *per se,* I do see the merit of giving concessions to a dog which has obtained a certain standard of obedience training, obtained either through a canine association obedience training class or through owner taught methods.

The validity of the standards obtained can be checked out by the dog officers perhaps through a check list devised by the Dog Advisory Committee. This would be an incentive to promote greater understanding of dog handling and dog obedience and therefore greater dog control.

The third factor which contributes to better dog control, and therefore lessening of dog attack rates, is education of the owner and the community in dog behaviour. This education could be targeted towards school children, service groups, senior citizens, etc. Therefore, these three factors—dog control measures, obedience measures and owner and public education measures—are the key factors to the elimination of dog attacks. This Bill emphasises only the first of the three factors—that of dog control.

We note that the Bill has identified four prescribed breeds—the American Pit Bull Terrier, the Japanese Toza and two South American fighting dogs, the Dogo Argentina and the Fila Braziliero—to have special controls. The Federal Government has banned the importation of these breeds, and this Bill controls these dogs by the requirement for such dogs to be muzzled and to be held on a leash by a person of at least 18 years of age at all times while in a public place. It requires the dogs to be desexed and it makes it an offence to sell the dogs or to advertise them for sale.

Repeated breaches of this provision may lead to disposal of the dog. There are increased penalties for not registering such a dog, for not attaching a registration disk or for allowing the dog to wander at large or to enter a place such as a shop or a school. These prescribed breeds of dog are singled out as experts tell us that these dogs have a genetic predisposition toward aggression. These dogs have been intentionally selected and bred to be aggressive; however, one notes that the genetics of canine aggression are not fully understood.

As observed earlier, this Bill is only one very small step toward dog control. It has been noted that South Australia does not have a great number of these prescribed breeds and therefore could not have contributed to the relatively large number of dog attacks. Other dog control measures to be considered include the application of leashes in public together with areas for dogs to run freely, such as a dog park, or micro-chipping

of dogs to enable identification of dog ownership. Further, and perhaps more importantly, considerations to be taken into account include the education of dog owners in dog handling and obedience training of the dog. All these further steps will contribute to the final aim: to minimise and finally eliminate dog attacks.

At this stage, this Bill to control these four exotic breeds of genetically aggressive dogs is an uncontroversial start. We need more action not only to control dogs but to educate the community and to train dogs—that is, a more proactive rather than reactive role. I therefore support this Bill at its second reading.

The Hon. M.J. ELLIOTT: I rise to support this Bill. As the Hon. Dr Pfitzner has already noted in slightly different wording, what a dog becomes is the result of a mixture of nature and nurture or of genetic composition and training. There is no doubt that particular breeds of dogs have been bred genetically to have a very aggressive disposition, and it is recognition of that fact that has necessitated the need to prescribe those breeds and not to allow further breeding of them. With any amount of training, these dogs will always be somewhat unreliable and, in any event, one cannot be certain of the quality of training they will get. So, by far the safer thing to do is not to have those breeds at all.

I wish to raise two matters with the Minister that I believe need to be addressed. First, in what situation do we find ourselves in relation to crossbreds of these dogs? Quite clearly we have banned the breeding of these particular strains of dogs, but are the owners of crossbreds immune from prosecution? As the Bill contains a reverse onus of proof—we have to prove what an animal is not—can we say that, if a dog looks like, say, a Japanese Tosa, therefore it probably is one? I have a suspicion, although I might be wrong, that the question of crossbreds might cause some difficulty.

The second matter, which is certainly a problem as I see it, concerns clause 9, which provides that a dog of a prescribed breed, except while the dog is on premises of which the person who is responsible for control of the dog is the occupier, must be muzzled, secured and restrained, etc. Under this Bill, the dog could be sitting unrestrained in the owner's front yard, but it would only take a simple dash and the dog could be with a child on the footpath. That sort of thing has happened on many occasions. For example, if a Pit Bull Terrier is sitting in the front yard, although unrestrained with no fence separating it from the footpath, I imagine that the owner would be within the letter of the law. I suspect that is an oversight; however, if that is so, I suggest that an amendment should be drafted to rectify that situation. The dog should be either behind a fence or secured in the ways described. With those two issues raised, the Democrats support the legislation.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I thank members for their support for the Bill before us. I agree with the Hon. Dr Pfitzner that this Bill does not pretend to solve all the problems relating to dogs and dog control in our community, but I am sure that everyone would agree that it is a step in the right direction. It is often better in these matters to take one step at a time and to solve one problem without attempting to solve all the problems of the universe in the one Bill. The Dog Control Committee has considered a number of the matters raised by the honourable member. It has also considered the fact that the current registration fees do not cover the cost of dog control in our community, so that non dog owners are subsidising dog owners. I imagine that one could spark a lively community debate as to whether or not that is legitimate, but the Dog Control Committee has considered a number of these matters and is expected to provide advice to the Government in the not too distant future.

With regard to the questions raised by the Hon. Mr Elliott, I point out to him that the Bill before us provides that the four breeds mentioned must be desexed, so there can be no further production of crossbreds once the Bill becomes law. However, I agree that that does not prevent the existence of crossbreds in the dog community, but as the number of dogs of the four breeds mentioned is very low in South Australia I imagine that the number of crossbreds would be even lower, so it is likely that the problem which the honourable member raises is a theoretical rather than a practical one. If a crossbred is in existence and is a dangerous animal, it can be dealt with in the way in which other dangerous animals or dogs are dealt with without requiring specific mention in the legislation. Furthermore, should such crossbreds be in existence, one could well expect that future generations will dilute the genes from a particular breed, thus halving the proportion of such genes with each generation and reducing genetic predisposition to violent or dangerous behaviour.

As to his second query regarding such a dog wandering free in the front part of a property without fences, I imagine that no owner would allow this to happen, that anyone owning a dog of this nature which has to be restrained on a leash whenever in public, would ensure that their dog was behind a high fence or was chained up. They would be making themselves liable for the penalties under the Act if they did not so restrain the animal or prevent it from freely wandering onto the public footpath. Once the animal did that the penalties of up to $2 000 prescribed in the Act would, of course, then become operative.

It would be a foolish owner indeed who did not apply the necessary restraints on his own property to prevent the dog from readily having access to the public road. I do not see that an amendment to the legislation is required at this stage. Action can be taken against the owner of any dog which goes onto the footpath and causes problems. This applies not just to the four breeds named in the Bill before us, but to any dog at all. It would seem to me that, given the higher penalties which would apply for these particular breeds, the owners would take greater care and be more inclined to ensure that their dogs did not wander readily onto the public footpath.

If it is found that problems arise in future which are not covered by either this or the more general legislation dealing with the control of dogs of all breeds, and in relation to action which can be taken against owners of any dogs which attack or threaten individuals, then, of course, further legislation can be brought before the Parliament. However, until there is evidence that owners are not behaving responsibly in accordance with the Act

the current Bill before us should adequately control the situation as is felt required by the community at the moment. I certainly thank members for their support for this Bill, and I for one hope it can become operative in the very near future.

Bill read a second time.

In Committee.

Clauses 1 to 8 passed.

Clause 9—'Controls relating to prescribed breeds.'

The Hon. M.J. ELLIOTT: I would like the opportunity to move what is a relatively minor amendment to this clause. The whole purpose of this Act as I understand it in relation to prescribed breeds is, first, that by not allowing further breeding eventually they will disappear within the life-time of one generation, but in the meantime these animals will be restrained so that they are not in a position to attack anyone. There is a clear loophole whereby an animal can be unrestrained, as clause 9 is now drafted. The fact is that the dog can be in the front yard—they do not have to be roaming at large on the footpath most of the time. If you look at the history of attacks these dogs have usually come tearing out of a yard and attacked, usually, a child walking along the footpath. It has only to occur once and you have one horrific injury, and if it is all for the sake of what is a relatively minor amendment now, I would ask that we could report progress. I do not think it is any skin off anyone's nose if we pass the legislation tomorrow rather than today. All it is doing, as I see it, is closing off a small loophole. We should have a requirement that the dog, except when it is behind a high fence on the owner's premises, shall be restrained or muzzled.

The Hon. ANNE LEVY: I do not see the necessity for such an amendment as I explained earlier, but as the Hon. Mr Elliott obviously wishes to move such an amendment but does not have it drafted—even though the legislation has been before us for nearly three weeks—I would be prepared to have progress reported with the aim of completing consideration of the legislation tomorrow.

Progress reported; Committee to sit again.

PUBLIC FINANCE AND AUDIT (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 1348.)

Clause 15—'Examination of accounts of publicly funded body.'

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

Page 6, line 35—After 'the Treasurer' insert 'or by resolution of either House of Parliament'.

As I mentioned in my second reading contribution, this amendment to section 32 of the principal Act extends the power of the Auditor-General so that he can now, if requested by the Treasurer, examine the accounts of a publicly funded body and examine the efficiency and the economy with which the body conducts its affairs. It is worth noting that a publicly funded body has a wide definition in the principal Act. It means a municipal council or a district council, it means any other body corporate that carries out functions that are of a public benefit and that has received money from the State by way of grant or loan.

In fact, in our amendment to section 4 of the principal Act we widen the definition of 'publicly funded body' by defining it as 'any other body or person that carries out functions that are of public benefit and that has received money from the State by way of grant or loan.' I think the Committee should be quite precise about what the Government is intending here, that an individual person can be defined as a publicly funded body for the purposes of this Act and the Auditor-General can, if requested by the Treasurer, examine the accounts of that person.

As I have said, that is a proposition which the Liberal Party supports. We have raised, of course, the situation where the Government of the day, the Treasurer of the day, could maliciously misuse this power to ensure that the Auditor-General was dragged off the scent of other cases of public importance and his attention and his efforts directed to this particular examination pursuant to section 32 of the principal Act. We accept that, by and large, Treasurers of any political persuasion are not only going to have parliamentary pressure but also public examination, particularly through the committee system of the Parliament, to ensure that they do not stray too far from their proper path.

So, on balance, I accept the broadening but I also sense that there is merit in the Committee seriously considering a wider definition, particularly in the light of what has happened in the last two or three years, that a resolution of either House should be sufficient to trigger the Auditor-General's ability to examine the accounts of a publicly funded body in respect to its efficiency and economy in the conduct of its affairs. I think it is a reasonable amendment and I would ask the Attorney-General to consider it.

Having said that, I guess the other point that I can explore publicly with the Attorney is that it seems that perhaps there is another way of overcoming the problem that we are trying to grapple with here and that is that there is an extraordinary range of persons and bodies corporate that receive grants and loans from the Government. I am wondering whether the Minister will consider—not necessarily on this occasion in relation to the amendment but on some future occasion, and particularly as the Attorney has the dual role of Minister of Public Sector Reform—whether or not he is satisfied that sufficient conditions, sufficient precautions, exist at present to ensure that bodies that receive grants or loans are required to provide their accounts as a matter of course, properly audited.

I know that when we are dealing with charities and community groups we do not want to be loading them up with administrative and financial burdens but, nevertheless, there is accountability for public moneys that have been spent, and we all in our parliamentary time know that there have been rorts, there have been abuses of the grants system, where someone has been slipped dollars improperly or the money has been misused or abused.

The Hon. C.J. Sumner: When? Not many, I tell you.

The Hon. L.H. DAVIS: Let us not get into red herrings, but I can instance examples in the arts area

quite comfortably. I do not want to be deflected and go off—

The Hon. C.J. Sumner: You raised the point.

The Hon. L.H. DAVIS: I have raised the point, but I am saying—

The Hon. C.J. Sumner: You are saying people have misused the money. Tell me how.

The Hon. L.H. DAVIS: I am saying that there have been abuses. I do not want to raise this at this point—

The Hon. C.J. Sumner: You just did.

The Hon. L.H. DAVIS: I know, but I do not want to go on with that. I am sure that all of us, whether we be in Government or Opposition, know that there have been examples of abuse, and they have been raised in the Parliament on occasions. There have been questions. I am not saying anything novel here, but simply asking whether the Attorney is satisfied that sufficient checks and balances are in place that perhaps could overcome the need for the Auditor-General to be sent rushing by the Treasurer to look at an individual or a publicly funded body in response to an allegation of misuse of money, mismanagement, whatever. It seems to me that a better option may be to put some more onus on those people receiving grants properly to account for the spending of that money.

My question to the Attorney (and he can take this on notice, I will be happy for a written response to this question if the answer is not available tonight) is: could he outline to the Chamber what procedures are in place for persons or corporate bodies who receive moneys from the Government to account for the proper spending of those moneys? I should have thought a streamlined procedure could be put in place that would perhaps overcome the problems of which we are all well aware and which presumably have led to this amendment to section 32.

The Hon. C.J. SUMNER: I suppose that over the long history of Government in South Australia it would be surprising if there had not been some abuses of moneys that had been made available by the Government to organisations in the community, but my experience is that that level of abuse in this State has not been high. When challenged, the Hon. Mr Davis could not quickly refer to any. He said that no doubt he could if he thought about it, but he did not want to. No doubt he could if he thought about it and no doubt other people could as well—

The Hon. L.H. Davis: I could immediately, but I did not want to.

The Hon. C.J. SUMNER: He could immediately but did not want to. That is all right, I suppose, but one would ask why he raised the issue.

The Hon. I. Gilfillan: You do not believe that he was actually bluffing and that in fact he could not have brought up the detail had he been pressed? You are not suggesting that, are you?

The Hon. C.J. SUMNER: Yes, I am suggesting that, sure.

The Hon. I. Gilfillan: Because he did seem to be hanging on to it fairly tightly.

The Hon. C.J. SUMNER: Yes, he does not seem to be very forthcoming with his accusations.

The Hon. L.H. Davis: You might regret the challenge.

The Hon. I. Gilfillan: No contest.

The Hon. C.J. SUMNER: As I said before, it would be surprising if there was not some abuse but, to emphasise the point I was making, I am not aware of widespread abuse in the expenditure of funds by organisations that receive grants.

The Hon. L.H. Davis: I did not make that—

The Hon. C.J. SUMNER: I know. I just want to make that clear. That leads me to the next conclusion, which is that I think the procedures adopted have been reasonable in the past in requiring proper accounts to be kept and proper acquittals of money that is spent. I know from my experience that procedures are in place within Government departments that ensure that money is properly spent.

The Hon. L.H. DAVIS: What about individuals who receive arts grants, for example? Are you satisfied that there are proper procedures? This does specifically include individuals, with the changed definition of publicly funded bodies. There are many individuals who receive grants. Are you absolutely satisfied that those people as a matter of course are required to account? My belief is that they are not.

The Hon. C.J. SUMNER: I do not know whether or not I am satisfied. It is not really a matter for me—

The Hon. L.H. Davis: But you do not know the answer. Could you find out?

The Hon. C.J. SUMNER: What I know from my experience is that procedures are established within Government to ensure that funds made available to organisations or individuals are properly accounted for and acquitted by the individuals concerned.

The Hon. L.H. Davis: I do not believe that is true.

The Hon. C.J. SUMNER: The honourable member says he does not believe that is true but is very diffident about providing any examples, and that leaves me in a bit of a spot, as the Hon. Mr Gilfillan rightly pointed out, because the honourable member can make these broad accusations and not actually follow them up with any examples. If he feels it is—

The Hon. I. Gilfillan: Perhaps he could do it in the privacy of your suite?

The Hon. C.J. SUMNER: That is what I was about to say. If the Hon. Mr Davis is nervous about raising it in the Chamber he can come to me or, preferably, the Treasurer, who is responsible for these matters, and provide him with the information that he has on the misuse of funds made available.

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: He says he does not want to see Mr Davis, and I do not blame him myself. I would not want to see Mr Davis either. All I am saying is if the Hon. Mr Davis does want to see a Minister or the Treasurer about this matter and give us some details of the people he says have abused their grant, I am sure that it would be taken up by the Government, either by the Treasurer or by the Minister responsible. However, the Hon. Mr Davis has not given us the benefit of his knowledge in this area. All I can say is, there are procedures in place; I do not have evidence of widespread abuse in this area; I would be surprised if there were not some individual examples of abuse, given the amount of Government money that is disbursed in this way. However, I understand that procedures are in

place. There are some Treasury instructions in relation to these matters and I will ask the Treasurer to provide them to the Hon. Mr Davis by correspondence. In the meantime, if his conscience pricks him enough I am sure he might be interested in conveying to the Treasurer or to the responsible Minister this store of information that he has about the abuse of moneys by those who have received them from the Government.

The Hon. L.H. DAVIS: I thank the Attorney for his lucid after dinner remarks and can only suspect that he is practising his after dinner speeches prior to his return to the private sector in some judicial or other capacity, perhaps appearing before the bar: because certainly there was some lively wit, some riposte and some nice word pictures, but it fell far short of the truth as outlined by me. I never used the words 'widespread abuse'. That was a figment—

The Hon. C.J. Sumner interjecting:

The Hon. L.H. DAVIS: It became a feature of your response.

The Hon. C.J. Sumner interjecting:

The Hon. L.H. DAVIS: No, but you said it and you sought to hang me on it. I am just slipping the noose off my neck, Attorney, because I am not going to be hung by you. In a bid to expedite the debate, I do not want to pursue the matter. I simply made the point that in a period of well over a decade in Parliament, and many of us in this Chamber tonight have had that experience, my observation has been that there has been from time to time abuse of grants by bodies corporate and individuals. And I rest my case.

I did not say it was widespread. I suspect that the very amendment is a tacit admission that this occurs. We would not be having this amendment if the Government did not believe it was happening. As I mentioned in my second reading speech it is yet another example of the Government shutting the gate after all the pigs have bolted.

Members interjecting:

The Hon. L.H. DAVIS: I think pigs are more appropriate in an election setting. I mean: when one looks at the Prime Minister and all the pork barrelling that he has done it is surely no surprise when one learns that he is a pig farmer.

Members interjecting:

The CHAIRMAN: Order!

The Hon. L.H. DAVIS: Having been removed from the track by the errant remarks of the Attorney, I now return to the amendment and accept the Attorney's offer. I would be particularly interested, in the area relating to individual grants, whether we are talking about the arts, community welfare and those sorts of areas, as to what the procedures are—whether they are standard as between departments and statutory authorities. I think it would be a useful exercise because I certainly do not know the answer to that question and it was certainly obvious that the Attorney had no idea, either.

The Hon. C.J. SUMNER: What are you trying to do, start a fight or something, you idiot? Of course I have an idea, Mr Chairman.

An honourable member interjecting:

The Hon. C.J. SUMNER: Accounts are provided to Government. The often audited accounts—

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: I am not the Minister for the Arts and I am not responsible for disbursing moneys, but I am sure that they also have to acquit the money in a proper way. However, we will get the information for the honourable member, as I promised before.

The Hon. L.H. Davis: You are a man of your word. I would always say that.

The Hon. C.J. SUMNER: Thank you very much. That is something, I suppose. The Government is not attracted by the amendment. However, in the interests of friendliness and not having a need for this matter to be passed from House to House, with all the attendant problems that that creates—

An honourable member interjecting:

The Hon. C.J. SUMNER: That is right. To avoid the matter having to be returned to the House of Assembly, the Government is prepared to offer a compromise, which would be that, instead of the Hon. Mr Davis' amendment reading 'or by resolution of either House of Parliament', it would read 'from both Houses of Parliament'. So, if that can be sorted out and honourable members opposite are happy with that, we will accept the amendment on that basis.

The CHAIRMAN: The Attorney is moving an amendment to the amendment of the Hon. Mr Davis?

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

To amend the Hon. Mr Davis's amendment by deleting either House of Parliament' and inserting 'both Houses of Parliament'.

The Hon. I. GILFILLAN: I understand the Attorney's amendment would require a resolution of both Houses for this particular requirement to be effected—in other words, the public authority, single or corporate, to be investigated by the Auditor-General. I do not believe it is necessary to have a resolution of both Houses. I think it is important that a House of Parliament which believes that this investigation should be conducted is able to make that decision as a sovereign House of Parliament and for it to be acted on. So, from that point of view I believe that the original wording of the amendment is more appropriate.

These measures, as I have noted from time to time with the establishment of select committees, can occasionally be used for Party political purposes, and I can understand the Government of the day, whichever colour it is, being a little nervous that a House that it does not control could use this mischievously. I do not think that is a fear. For one thing the Auditor-General is a responsible, objective and detached person. My biggest concern is that if it were to be abused it would really snow the Auditor-General's Department with too much work and therefore it would be totally unfair on the department and the Auditor-General and demean the very high intention that I believe the Hon. Leigh Davis has for his amendment. As we do have the moderating influence of the Democrats in this place, I do not believe it is likely to be a risk in the foreseeable future. My intention is to oppose the amendment to the amendment and indicate support for the original amendment.

Amendment to the Hon. Mr Davis's amendment negatived; the Hon. Mr Davis's amendment carried; clause as amended passed.

Clause 16—'Audit of other accounts'.

The Hon. L.H. DAVIS: The Attorney-General covered some of the matters raised in the second reading stage of the debate. I did make the point, and I would like it clarified, that sections 3 and 6 really set out to pursue different areas. The Auditor-General is being given power to audit the accounts of a public authority where the ownership of shares in a company or a subsidiary thereof is the instrument used by the public authority to carry out some or all of its functions. There the percentage ownership could be effectively anything; it could be 5 per cent or it could be 10 per cent. I have instanced the example of Health and Life Care where—to use an example, the SGIC—they may have a part ownership in hospitals, a seat on the board or some influence over policy direction of that operation linked in with their health insurance. I think that is a good example to consider because quite clearly this Act sets out to ensnare companies that have been in the past beyond the reach of the Auditor-General and may well have occasioned some of the vast financial problems that this State now faces.

I wanted to clarify that point first before we dealt with clause 6 under which, as I read it, the Auditor-General can specifically audit the accounts of a company if the public authority is the owner of more than a prescribed percentage of the issued share capital, irrespective of whether they are a passive investor or an active investor. Clause 6 is really focused on the fact that they hold a prescribed percentage of the issued capital which triggers the Auditor-General's ability to examine the accounts of the company for effectiveness and efficiency of operation.

The Hon. C.J. SUMNER: As I have already explained during the second reading debate by way of interjection to the two specific questions asked by the honourable member, the answer, even in the Committee stage, remains 'Yes.'

The Hon. L.H. DAVIS: I thought it important to get that on the record because that point may well be the subject of—

The Hon. C.J. Sumner: It is on the record.

The Hon. L.H. DAVIS: I am not sure whether the interjections are picked up, so it is good to get that on the record.

The Hon. C.J. Sumner: Again.

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

Page 7, lines 34 and 35—Leave out 'the prescribed percentage' and insert '50 per cent'.

The Liberal Party's concern, as expressed in the second reading, is that for the purposes of this subsection the prescribed percentage of 50 per cent, or such other percentage as prescribed by regulation, is unsatisfactory because the Government of the day, with power in both Houses, could suddenly increase that percentage to 80 per cent.

The Hon. I. Gilfillan: It could, anyway.

The Hon. L.H. DAVIS: Well, it could, anyway. I am simply saying that by regulation it is easier to amend it than if it is enshrined in the Act. Where we are dealing with passive investors, who are not using the company as part of a function, such as the example that I used with SGIC and Health and Life Care, it is less likely that the company will be in a situation—

The Hon. C.J. Sumner: At 49 per cent you can't investigate; that's what you are saying.

The Hon. L.H. DAVIS: That is what we are saying. The question that I ask, because the second reading contained no reference to it, is: can the Attorney-General come up with a specific example of a public authority which would not be trapped by subsection (3) and would be trapped only by subsection (6) where it holds 50 per cent? That is the puzzlement to me. I know that the drafting is necessarily wide to cover all points. However, I do not think it would be satisfactory for a situation to exist where the prescribed percentage could be moved one way or another by regulation out of sight, largely speaking. I think it is more important to have this set in regulation. I should be interested specifically if the Attorney-General could come up with some examples so that the Committee could consider the point.

The Hon. C.J. SUMNER: I was very enthusiastic to come up with examples, but previously the honourable member was reluctant to give me any of his examples. Therefore, I am not feeling as forthcoming as I would have been. I think the Parliament should operate on the basis of—

The Hon. L.H. Davis: Tit for tat.

The Hon. C.J. SUMNER: Tit for tat. That is right; I will give the honourable member some information if he will give me some. He was not prepared to give any, so I am reluctant to do so. However, I will try.

The honourable member berates us on a regular basis about the activities of SGIC, and in particular the Terrace Hotel. I am advised that if the Terrace Hotel had not been owned 100 per cent by SGIC it would have fitted into what was intended by subclause (6). As it turned out, the Terrace Hotel was owned 100 per cent so presumably it would be more than 50 per cent and therefore could be looked at by the Auditor-General. That is an example of a situation, depending on what the percentage is, where the Auditor-General would have the power to investigate under this clause but did not have the power previously.

The Hon. L.H. DAVIS: I am surprised that the Attorney-General has given that example, because I should have thought that one could argue that Bouvet Pty Ltd (a name which in French bears no relationship to hotels; it is a flange or something like that) fits under subsection (3)—the instrument used by the public authority to carry out some or all of its functions. One could argue that SGIC had a variety of functions. It was a property owner, a property investor, a property speculator, it dealt in shares, and provided financial, insurance and hospitality services. If we looked at SGIC's range of operations, I think that could comfortably be brought within the ambit of subsection (3). Does the Attorney-General agree or not?

The Hon. C.J. SUMNER: The point made by the honourable member is arguable. If he wants to be clear about it, he should support the proposition in clause 16(6) where I suggest there would be no doubt about it. However, there might be an argument that the company running the Terrace Hotel, although owned by SGIC, was not an instrument used to carry out some or all of its functions. I understood that was the whole gravamen of the Hon. Mr Davis's argument in this place over a long time, namely, that the SGIC had no business to be in

hotels as it was not part of the SGIC's functions. If that is his argument, clause 16(3) does not fit.

However, even if the honourable member is correct, the fact of the matter, as I am sure he would have to concede, is that it is arguable. However, there can be no argument about the power given to the Auditor-General in that example of the SGIC and Bouvet Pty Ltd under clause 16(6).

The Hon. L.H. DAVIS: I say just two things on Bouvet. I have never argued that it should not have been an SGIC function as such.

The Hon. C.J. Sumner: You have.

The Hon. L.H. DAVIS: No; just listen. My argument simply has been that SGIC is the only insurance company in Australia, if not the world, that operated its own hotel rather than badging it and having an operator like the Hyatt, the Intercontinental or the Sheraton running it on its behalf. That was my first argument. My more substantial argument was: what was it doing with the management of that hotel blowing its budget on the refurbishment, the nepotism that existed, et al? I rest my case.

I accept what the Attorney-General is saying. It is subject to debate as to whether Bouvet falls within subsection (3) or not. But I guess the point I am making is that we have this curious attempt to try to cover every possibility, given that the horse has already bolted. I accept the need to do this. This is why the Opposition has in large part gone along with the widespread amendment to section 33 regarding the Auditor-General's extended powers to audit accounts. I am simply saying that, if we believe that passive investments in companies held by public authorities should be audited if the holding is less than 50 per cent, then I find difficulty because the Attorney cannot come up with an example of what will be covered by subsection (6). He is not doing it on the basis of tit for tat. I tried to think of examples and I genuinely cannot.

For instance, SAFA has a whole range of subsidiary companies, but they are all part of carrying out its functions. I can similarly think of SGIC, with a wide range of subsidiary companies which are surely part of that company; the same with the State Bank, which may or may not be picked up with this legislation. I have tried hard to think about it. I had hoped that, with the benefit of the resources of Government, the Attorney and his advisers may have come up with an answer. Whether or not we are trying to cover some future situation, or are just being ultra cautious, I do not know, but I would really like to know whether there is an example which is not covered by subsection (3).

The Hon. C.J. Sumner: I gave it.

The Hon. L.H. DAVIS: The Attorney did not. I was not satisfied that Bouvet was an example. I am sure Bouvet is clearly covered in subsection (3).

The Hon. C.J. Sumner: It is not.

The Hon. L.H. DAVIS: The Attorney did not say that before. He half agreed with me.

The Hon. C.J. Sumner: It is arguable.

The Hon. L.H. DAVIS: I just find it curious that we have this sort of situation where, for an active involvement, we can audit the accounts with any level of percentage—5, 10, 20 or 30 per cent—but for this more passive involvement we have a prescribed figure which is 50 per cent but it could be lower. For instance, the Government of the day might say, 'There are some people we do not like on this board,' if the Liberal Party is in power. If the Labor Party is in power it might say, 'Let us prescribe by regulation the percentage for this particular company.' I am a bit nervous about it. That is why I have moved the amendment.

The Hon. I. GILFILLAN: I usually have some apprehension about leaving matters to be prescribed and this is no exception. I take particular interest in subsection (8), which specifies quite clearly that for the purposes of subsection (6)—and that is the section to which the Hon. Mr Davis is moving his amendment—the prescribed percentage is 50 per cent, or such other percentage as prescribed by regulation.

One assumes that the Government wanted 50 per cent as the operative percentage. The Attorney interjected and said, 'Does this mean that if it was a 49 per cent shareholding, then the Treasurer would have no power to order the Auditor-General to make an audit of the accounts of the company and examine the efficiency and economy with which it conducts its affairs?'. I think that is a valid point. In fact, it is probably the most significant point, because there may well be a substantial shareholding held by a statutory body and there is serious cause for concern. On behalf of the people of this State it is reasonable to have it independently audited by the Auditor-General.

But leaving the prescription could lower the percentage, as indicated by the Hon. Mr Davis, to something like 5 per cent. It is not beyond the bounds of a somewhat mischievous Government or statutory body of a government to take on relatively minor shareholdings and then subject that enterprise to quite a detailed sort of analysis and scrutiny for purposes which I will not attempt to predict, other than a genuine concern that the company was being poorly managed and it was a proper responsibility of the State to fund an audit.

I would think that the Auditor-General must quake at the thought of what could happen with an open ended scope of prescription on percentage, where we get the whim of the Government of the day to investigate any percentage of shareholding just by promulgating a regulation. I do not think that is acceptable. We are really dealing with what are a very small number of occasions that might occur in a decade, but to cover them a bit more widely than 50 per cent. If the Government wants to have that scope to go to percentages below 50 per cent, then let it accept a lower percentage going in, in the figure and in the Bill. It seems as if the Hon. Mr Davis is protecting companies which do not have shareholdings of a Government body below 50 per cent. I am not too fussed about that. I think that if there is a 40 per cent-plus shareholding by the Government or a Government instrumentality, it is fair enough that the Auditor-General, if the Treasurer sees fit, could do an audit. So, Mr Chairman, if it is in order, I would like to move an amendment to the amendment that the figure of 50 be deleted and replaced with a figure of 40.

The CHAIRMAN: Are you moving that amendment?

The Hon. I. GILFILLAN: I move:

To amend the Hon. Mr. Davis's amendment by striking out '50' and inserting '40'.

The Hon. C.J. SUMNER: The Government opposes both the amendment to the amendment and the amendment, partly for the reasons I have already outlined. As to the origins of this amendment, I am advised that it was an amendment that was prepared in consultation with Treasury, Department of Premier and Cabinet and the Auditor-General. I am advised that the Auditor-General feels he could not at the moment, for instance, audit the affairs of Bouvet Pty Ltd because of the current restrictions which exist, and unless he gets an amendment of this kind then that company would be beyond his capacity to audit. I have not spoken personally to the Auditor-General—

The Hon. L.H. Davis interjecting:

The Hon. C.J. SUMNER: That is, without any of subsection (6) he could not do this. That is by way of further answer to the honourable member's original query as to why subsection (6) was considered necessary. Perhaps the honourable member is right, and it was an excess of caution to provide that there was a catchall to ensure that in future there could not be bodies hiding from the Auditor-General, even though they were substantially owned by Government. However, I am advised—I have not spoken to the Auditor-General personally, obviously—by his officers that subsection (6) was regarded by him as an important provision to be included in the legislation.

The Government's preferred position was that the prescribed percentage be 50 per cent or such other percentage as is prescribed by regulation. So, I guess that was an indication that 50 per cent was the indicative figure. However, as I said by way of interjection, what would happen if the ownership was only to the extent of 49 per cent? The Government wanted a fail-safe mechanism so that, if there were major problems which the Auditor-General and the Government felt needed investigation, the prescribed percentage could be reduced from 50 per cent to something lower to enable that to occur.

The Hon. I. Gilfillan: Why have the percentage at all?

The Hon. C.J. SUMNER: That is probably a fair point—why have the percentage at all? I think the percentage is there to indicate that this provision should not be abused; it should be considered very carefully by the Auditor-General or the Government before it is used. That is probably the reason for a figure being placed in the legislation. The other matter that I point out to members is that the Treasurer must give his or her consent to the audit and examination. So, there is accountability through a Minister to Parliament if an audit of this kind is ordered. Subsection (6)(b) provides that the Auditor-General may audit the accounts but that the Treasurer must give his or her consent to the audit and examination. So, there is control through a Minister who is accountable to Parliament. The figure of 50 per cent and the control of the relevant Minister were inserted because the Government was concerned to assure the Parliament that the use of this provision would not be abused. By inserting the figure of 40 per cent members are reducing the capacity for the Auditor-General to make inquiries where the beneficial ownership in a Government authority is less than 40 per cent. If that causes problems, members will have to live with it, because the Government believes that the Bill as introduced should be supported.

The Hon. I. GILFILLAN: This is some of the quaintest drafting of any Bill that I have ever seen. If the prescribed percentage in subsection (6)(a) is to be 50 per cent or such other percentage as is prescribed by regulation, surely that phraseology should have been included in that paragraph. It seems very strange to me that it is dealt with over the page in this rather odd way. I would like the Attorney to attend to this question: does the Bill as it is drafted give the sole initiating power for such an audit to the Auditor-General? In other words, is the Auditor-General the person who will decide whether or not to audit the accounts of a certain company and, having made that decision, will he have to get the Treasurer's consent or he cannot go ahead? If the initiative is only with the Auditor-General and if he or she is not under instruction from the Government I would feel more at ease with not having a particularly high prescribed percentage because the Auditor-General will not want to load his department with extra audits. I would like a clear undertaking that the drafting of the Bill spells out specifically that the audit can only be initiated with the consent and authority of the Auditor-General who must get the Treasurer's consent before the audit can go ahead.

The Hon. C.J. SUMNER: It is clear from the Bill that subsection (7) provides that the Treasurer can initiate an inquiry by reference to the Auditor-General.

The Hon. L.H. DAVIS: First, I want to address the matter that is the subject of the amendment. There is very little difference between the three Parties on this matter. The Government proposes that the prescribed percentage be 50 per cent. I accept the Attorney-General's explanation that that is meant to be indicative, but the Government wants to retain flexibility. The Democrats and the Liberal Party prefer to have a fixed percentage rather than leaving it to the whim of the Government of the day. In the spirit of compromise I accept the Hon. Ian Gilfillan's amendment to the lower figure of 40 per cent. It is a safer figure than mine and it takes into account some of the Attorney-General's concerns. So, I am prepared to accept the Hon. Ian Gilfillan's amendment from the floor.

The second point that I want to raise—and I would like to think that the Hon. Ian Gilfillan and the Attorney-General would react favourably to this observation—is that subsection (6)(b) is curiously drafted. It cuts across the fundamental and essential independence of the Auditor-General. Subsection (6) provides that the Auditor-General may audit the accounts of a company and examine the accounts if the public authority is the owner of more than 50 per cent or 40 per cent of the issued share capital and if the Treasurer has given his or her consent to the audit and examination; yet, subsection (7) provides that the Auditor-General must audit the accounts of a company if requested to do so by the Treasurer. So, on the one hand we have the Treasurer saying, 'You must do this' and the Auditor-General has an obligation, but on the other hand the Auditor-General's ability to investigate accounts of a public company can be vetoed under subsection (6)(b).

I did not pick that up before, and that matter really concerns me. I cannot think of another piece of legislation that has passed this Parliament or that is in statute where the Treasurer of the day actually has the power of veto on the Auditor-General. I find that unacceptable, and after we have dealt with this amendment I will move to strike out subsection (6)(b), because what is the fall-back position if the Auditor-General says, 'I want to audit these accounts; I have had evidence of gross impropriety' and the Treasurer says, 'No'? Where does the Auditor-General go then? What is the answer to that?

The Hon. C.J. Sumner: But it is only in this limited area.

The Hon. L.H. DAVIS: The Attorney-General says that it is only in this limited area. Does he accept that? What happens if the Treasurer of the day says 'No'? What does the Auditor-General do then?

The Hon. C.J. SUMNER: I do not know why the honourable member is getting himself into a lather. His current argument seems to have turned his original argument on its head. Originally he said that this subsection could be used to allow the Government to investigate companies in which it only had small shareholdings. Because of concerns such as this, the Government wanted to make sure that if that were to occur there was some political accountability through a Minister to the Parliament.

It astonishes me that people who have been in this Parliament for years and years sometimes do not understand the basic principles of ministerial responsibility and accountability to Parliament. That is the reason it was put in, so that if for instance the Auditor-General did go on some kind of witch-hunt into the affairs of a private company there could be a Minister, not only the Auditor-General, as a parliamentary officer, who could be called to account in the Parliament for having agreed to the Auditor-General going off and conducting that inquiry. Given the Hon. Mr Davis's original concerns about clause 16(6), I would have thought that it was a protection he would have supported; an added level of accountability for actions taken under this section.

The Hon. L.H. DAVIS: I can see that the Attorney-General can construe that out of the argument for the existence of subsection (6), but he cannot have it both ways. If he believes the Treasurer should give his consent to the audit and the examination under subsection (6), then it would be equally true for the Treasurer to give his or her consent to the audit and examination under subsection (3), because you may well be traversing similar ground. It is quite possible, under the example which I think the Attorney-General accepted, that, for example, SGIC may have a link with Fauldings, a major interest, as it did have—12 per cent; pharmaceuticals more cheaply linked in with the hospitals; the health insurance arrangements. Yet, there is no brake on the Auditor-General's power to audit the accounts of a company, under subsection (3). So I would have thought if he was going to argue that point he has to argue it for subsection (3), where it simply does not exist.

The Hon. C.J. Sumner: Subsection (3) is different.

The Hon. L.H. DAVIS: It is not different. You have accepted that Bouvet arguably could fall under subsection (3). Fauldings certainly would fall under subsection (3). You can use my Health and Life Care example if you are not satisfied with Fauldings. They actually owned an interest in Health and Life Care, a public company. The Auditor-General under the terms of subsection (3) could clearly go in and audit a publicly listed company on the Stock Exchange—Health and Life Care—under subsection (3). You are saying that is all right without the Treasurer's approval, yet under subsection (6) you are saying it is needed. I find that unusual. Overriding that concern and inconsistency is the fact that an Auditor-General of the day can do anything he likes, given his independence. He is responsible only to Parliament and no Treasurer of the day can tell him what to do. If the Attorney-General thinks I am on the wrong tram let him tell me of another piece of legislation where the Treasurer has a similar power to veto an Auditor-General, because I certainly do not know of one. Just because you do not like it there is no need to pack up stumps.

The Hon. C.J. SUMNER: There is no point in arguing with you about it. You are a twit.

Amendment to amendment carried; amendment as amended carried.

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

Page 8, lines 4 and 5—Leave out subsection (8) and insert the following subsection:

(8) As soon as practicable after making a request under subsection (7) the Treasurer must—

(a) cause notice to be published in the *Gazette* stating the name of the company in relation to which the request was made; and

(b) cause a statement of his or her reasons for making the request to be laid before each House of Parliament.

This follows on from the amendment that I have already moved. It involves the necessary deletion of subsection (8) and then I seek to insert another subsection.

The Hon. I. GILFILLAN: Although I can see there is good argument for deleting subsection (8) I am not sure that I am persuaded that the substitution subsection is justified. I would certainly like to hear more justification from the mover. However, while I have the call, on reflection I do share some misgiving about (6)(b) where the Treasurer is required to give consent before the Auditor-General can audit the accounts of a company in which the public authority is a legal and beneficial owner of more than 40 per cent, as it is now, and I recognise now that my inadequate reading of the Bill left me on the wrong foot earlier when I was questioning whether the Treasurer could instruct the Auditor-General to do an audit in a specific case, and that does stand in subclause (7). I am certainly not making it an issue that I would personally move an amendment to delete it, but I agree it would be a better Bill without that requirement of the Treasurer. I think the Auditor-General does stand at arm's length from the Government of the day. I believe, as with the Attorney-General, that there are unique roles that are played on a parliamentary role rather than a servant of the Government role and I would feel quite confident to entrust the Auditor-General with being able to make that decision in his or her own right, without necessarily having the consent of the Treasurer. That applies to subclause (6).

The Hon. L.H. DAVIS: I accept that obviously we need to leave out subsection (8) and if the Hon. Mr Gilfillan is not going to support the new subsection (8) I will not detain the Committee by arguing the case, but in relation to subsection (6)(b), to test support in the Committee, I would move for the deletion of that subsection (6)(b), the words 'the Treasurer has given his or her consent to the audit and examination'.

The Hon. C.J. SUMNER: I make my position clear on this. The problem is that the Hon. Mr Davis has done a complete back flip. He came into the Chamber concerned about companies being investigated by the Auditor-General, and now he is taking out one of the controls that were put in to ensure that the unique powers in clause 16(6) were not abused. His argument that, if I want the clause about the Treasurer giving his consent in clause 16(6), I should also have it in clause 16(3) does not wash with me because they are quite distinct clauses and they cover different situations.

The Hon. I. GILFILLAN: The issue whether the Treasurer should or should not be required to give consent in subclause (6) is a matter of some significance, and I indicated that I believe the Auditor-General could and should be entrusted to make that decision apart from the Government of the day. It is not an issue upon which I intend to take a stand as far as an amendment goes.

If the Government, which has introduced the Bill, feels strongly that it should be in place, I will not support its deletion. However, I remain uncertain about its appropriateness under these circumstances. I see the Auditor-General as a separate entity, not a direct hand servant of the Government of the day, and he or she should be entitled to make his or her own decision free from having to seek consent from the Treasurer of the day. Having said that for the second time, I indicate again that it is the Government's wish that it be in here. I do not think is a matter of enormous significance in the immediate future, and I do not intend to support am amendment to delete it.

The Hon. L.H. DAVIS: The Democrats have made their position clear. They may share my concern, but I know where the numbers lie. Therefore, in order to expedite Committee proceedings, I withdraw my amendment to delete clause (6)(b).

The CHAIRMAN: It has been drawn to our attention that '50 per cent' appears in subsection (8), so that subsection will need to be deleted.

The Hon. L.H. DAVIS: I understand. I want to ask one more question of the Attorney before we complete this clause. I take it that the Auditor-General, when auditing these publicly funded authorities, will be bearing the costs of any audit because some of them will already have been audited in the private sector. I take it that the Government does not have any intention that there will be any additional cost burden on these companies which will be the subject of an additional audit by the Auditor-General.

The Hon. C.J. SUMNER: The situation, I am advised, is that the Act provides for a fee to be charged where the Auditor-General conducts the entire audit. It is doubtful that the Act would allow a fee to be charged for a partial audit under section 33. In any event, the Deputy Auditor-General advises that it has not been the practice in the past, nor is it intended in the future, for the Auditor-General to charge a fee under the circumstances envisaged by section 33 or for other examinations that may be requested by the Treasurer or Parliament.

The CHAIRMAN: I take it from you, Mr Davis, that you are moving to strike out subsection (8).

The Hon. L.H. DAVIS: Yes, I so move.

Amendment carried; clause as amended passed.

Remaining clauses (17 to 20) and title passed.

Bill read a third time and passed.

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

Adjourned debate on second reading.

(Continued from 18 February. Page 1322.)

The Hon. M.J. ELLIOTT: My contribution on this matter will be brief. The Democrats support the broad thrust of the legislation but will look with some interest at amendments put up by the Opposition. Several issues raised by the Hon. Mr Griffin I think deserve some attention. There is no doubt, though, that the present Act is simply too narrow, to the point almost of being worthless, and that it is necessary to broaden some of the definitions to ensure that we are not looking just at the direct interests of the members themselves but also of those directly associated with them. It is also important that we find out whether they stand to benefit in ways that are not presently being exposed by current legislation. As I said, we will be supporting the legislation but there are a couple of matters raised by the Hon. Mr Griffin to which we will be giving consideration during the Committee stage.

The Hon. C.J. SUMNER: I thank members for their contribution to the debate and the support for this Bill. A number of issues have been raised and I shall deal with these in turn. The Hon. Mr Griffin queries the effectiveness of having a register of interests at all. It would serve little to go over all the same ground that was gone over when this Act was first debated in 1983. The plain fact of the matter is that the public demands accountability from all those who represent it. Members of Parliament must be accountable to the public. That accountability involves showing that members are and are seen to be free from motivations of self interest. A register of interests forms an integral part of the system that ensures that that accountability occurs.

Both the Hon. Mr Griffin and, to some extent, the Hon. Mr Irwin appear to be of the view that Standing Orders deal adequately with issues where members may have conflicts of interest. This is simply incorrect. The Hon. Mr Griffin stated that where members speak on a Bill in which they have an interest, not necessarily a pecuniary interest, they disclose that interest in accordance with the Standing Orders. In fact, the Standing Orders are very limited in their application to disclosure of interests. As the Hon. Mr Griffin pointed out, the Standing Orders refer only to direct pecuniary interests. They provide that a member is disentitled from voting upon any question in which he or she has a direct pecuniary interest not held in common with the rest of the subjects of the Crown. This in itself is very restrictive.

However, Standing Orders go on to provide that the obligations to declare an interest and the disentitlement from voting do not apply to motions or public Bills which involve questions of State policy. In summary, Standing Orders have very limited application to the types of situations about which the public has a right to be concerned. It may well be that the Standing Orders should be reviewed with a view to ensuring that all relevant interests are declared in the Chamber prior to a member's speaking on a point. I would welcome any suggestions for improvement in that regard. However, the need for an improved register would still exist even if the Standing Orders were strengthened in the manner just mentioned.

The access that the principal Act allows to the public register enables members of the public to carry out such checks. The honourable members point out that senior public servants and Ministers are in a position to influence the way in which Government policy is shaped and formulated. This is undoubtedly the case. The Government is preparing a Cabinet handbook that will deal with disclosure by Ministers and will advise this place of the measures adopted in due course. In any event, these principles are now well known as a result of a paper I prepared on conflict of interest and which was tabled with the Worthington report last year.

It is already the case that chief executive officers of administrative units are required by the Government Management and Employment Act to disclose their pecuniary interests to the Commissioner for Public Employment. Steps are also being taken to insert contractual obligations on ministerial advisers and press secretaries to make similar disclosures to those required of members. The reality is that accountability is being more stringently required in every area of public life. The code of conduct and guidelines for ethical conduct for public employees in South Australia, which were launched in October last year, are evidence of the need for heightened awareness of these issues in the Public Service. The Public Corporations Bill contains provisions that reflect the need for much more accountability from those involved in the management of public corporations. The public expects members of this place to take the issue of accountability seriously also. The register plays an important role in showing to the public that the members in this place regard the issue of accountability seriously. It is a concrete example of our putting into practice what we preach and what we require of the other arms of Government.

The Hon. Mr Griffin points out that a subjective decision has to be taken about how far one casts the net as to what interests must be disclosed. This is exactly the purpose of this Bill. The Government has taken a decision that the net is not cast wide enough at this stage. The net must be cast wider in order to catch the most commonly used methods for organising one's affairs where one's assets are not registered in one's own name. Where one enjoys the benefits of assets that are not in a person's own immediate ownership, the same disclosure should be required to be made about those assets as are required to be made about assets that are held in one's own name.

The Hon. Mr Griffin refers to comments made in the Western Australian Report of the Royal Commission into Commercial Activities of Government. The comments to which he referred relate to whether or not disclosure of spouse and dependants' assets should be required. The Western Australian royal commissioners were concerned that such disclosures might involve too great an interference with the privacy of the member and of his or her family. I point out that there is nothing in the South Australian Act or in this Bill that requires a member to disclose by whom an asset is held. The Act and the Bill are aimed at ensuring that, where members hold assets or enjoy benefits derived from assets held by closely related persons, members should disclose the existence of the connection between the member (or the closely related person) and the trust or company involved. Nor is there anything in the Act or the Bill which would require members to interrogate their spouses or their dependants about their assets. The member is to disclose those assets, etc., known to him or her. The Hon. Mr Griffin refers to the increased burden—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: It doesn't need to. That is quite obvious. You can only disclose what is known to you. If you do not know it you cannot disclose it.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: That is clear; you can't disclose what you don't know.

The Hon. Diana Laidlaw interjecting:

The Hon. C.J. SUMNER: You are not obliged to put the thumb screws on your spouse or beat them up in order to get the information out of them. If you do not know what assets they have got, you cannot disclose them. However, if you do know them then you are obliged to disclose them. You can only be influenced by those assets or income about which you know that you or your spouse are in receipt of.

The Hon. Mr Griffin refers to the increased burden which he fears the amendment to section 4(4) of the principal Act will involve. Unfortunately, the Act as it stands is quite unclear. This is confirmed by the former Solicitor-General's opinion, which contrary to the honourable member's comments does recommend the repeal of section 4(4).

The honourable member suggests that the problem can be fixed by altering the form. However, the form can only require disclosures to be made if those disclosures are required by the Act. If there is confusion, then the form cannot require disclosures about which there is any doubt. It was decided that the easiest way to overcome the question as to what information needs to repeated each year was to have a requirement that all information should be included every year. That way there can be no confusion. Mere repetition of a previous year's information should not present an onerous task to most members.

I should say, Mr Acting President, that in my experience it is easier to repeat the information than to pick through and cross out the bits that you want out and add bits that you want added in, and frankly just putting in the form which completely repeats the information is the easiest way to do it, particularly as honourable members opposite are well supplied with computers. It would just be a matter of updating the form every year.

The Hon. Mr Griffin is concerned that the Bill will require a member to disclose the income sources of trusts

of which a member's children are beneficiaries. Given the limited definition of what an income source is, I respectfully suggest that the requirements are not onerous in the way the honourable member has suggested. Disclosure of income sources will only be necessary where the trust is conducting a trade, vocation, business or profession. If it does, then it is likely to be a public trust which publishes accounts to its members, and a member can comply with the requirements of the Act by filing a copy of the trust's annual report with the Registrar.

The honourable member understands the Bill to require members who are trustees of testamentary trusts to disclose information about testamentary trusts. The Bill would require disclosure in a primary return only of actual or anticipated sources of income received by trustees of non-testamentary trusts of which the member or a member of the member's family is a beneficiary.

The honourable member indicates that he will be seeking to move an amendment in relation to section 4(2)(a) to limit the information required from a member about companies and trusts to situations where the member has a controlling interest in the company or trust concerned. I would be prepared to examine such an amendment.

In relation to the honourable member's concerns about the definition of 'gift', I would point out that the definition is similar to definitions used in former gift duties legislation in this State, and is similar to formulations used in the Commonwealth Electoral Act and the New South Wales Election Funding Act.

The honourable member takes the view that the Bill requires disclosure of situations where the member has used property which is worth more than $500, rather than disclosures of incidents where the member has had use of property where the use is worth $500. The Government intends to cover only the latter situation, and will move an amendment to clarify that point.

Turning to the point of principle, using someone else's shack for a reasonable period and borrowing expensive equipment for nothing begs the question as to what *quid pro quo* the lender might seek in return for such benefits. Such situations may create a feeling of obligation on the part of the borrower towards the lender. If the borrower is a member, that sense of obligation may be exploited. As such these are precisely the types of relationships which should be disclosed.

Similarly in relation to investments, it is the Government's view that, if one has invested in an organisation, the principle of accountability requires that there be disclosure of that fact. Such an investment might well raise in a member the desire to protect that interest and the public should be able to ascertain that potential exists.

The Hon. Mr Griffin points out that the monetary limits regarding the value of gifts have not been changed since the Act came into force in 1983. The Government would be prepared to give favourable consideration to the possibility of raising these limits. However, it is interesting to note that the critical cut-off point for the acceptance of gifts by public servants falls at gifts which are valued in excess of $200, and they are contained in guidelines which apply to Ministers and public servants, although in the context of the Cabinet handbook I mentioned earlier that issue may be revisited. However, I am certainly happy to consider any amendment that the honourable member may wish to move in that respect. Although I still think a gift to the value of $200 is reasonably—

The Hon. K.T. Griffin: The $200 is not fixed by the statute.

The Hon. C.J. SUMNER: That is the one fixed by administrative guidelines. The $200 is fixed by a Cabinet agreed guideline which applies to Ministers and public servants who receive gifts. However, I am happy for the matter to be debated by the honourable member further in the Committee stage.

The Hon. Mr Dunn expresses deep concern about the fact that his son and his prospective daughter-in-law will be exposed to invasion of their privacy, as the honourable member and his son are shareholders in a proprietary limited company.

It is important to note that the limited definition of 'family' means that, unless the son is under 18 years old, the honourable member will not be required to declare anything in relation to his son by reason of the family relationship. Any declaration which includes any information about his son's affairs will come about because of the business relationship which the honourable member has entered into with his son. There is nothing to require the honourable member to state that his son has any interest in anything disclosed by the honourable member on the honourable member's declaration.

Bill read a second time.

WHISTLEBLOWERS PROTECTION BILL

Adjourned debate on second reading.

Continued from 18 February. Page 1319.)

The Hon. J.C. BURDETT: I support the second reading of this Bill, the object of which, as set out in clause 3, being to facilitate the disclosure in the public interest of maladministration and waste in the public sector and of corrupt or illegal conduct generally (a) by providing means by which such disclosures may be made and (b) by providing appropriate protection for those who make such disclosure. I do not think that anyone can have any objection to those objects, and I suppose the only reservation which one could have would be as to whether there is any possibility of abuse or any possibility of innocent persons being victimised by the legislation, and that is covered in the Bill. Clauses 8 and 9 give a protection against this which appears to me to be adequate.

Both the Hon. Mr Griffin and the Hon. Mr Roberts, when speaking to this Bill, referred to the desirability at least at some stage of the Bill's being extended to the private sector, and I do not think that anyone could object to that. However, the Hon. Mr Roberts gave an example in reference principally to one Allan Irving, a Liberal candidate in the coming Federal election. The facts stated by the Hon. Mr Roberts are not correct. I propose to set the record straight. The Hon. Mr Roberts, at page 1319 of *Hansard,* said:

The liquidator has also alleged that Irving and other former directors of Hay Australia used the assets of the company to

make payments to reduce their personal liabilities prior to the company's going into liquidation.

That is not correct. There has been no suggestion by the liquidator or anybody else that either Irving or any former director used the assets of the company to reduce their personal liabilities. The facts of the claim made by the liquidator against the directors are that the Australia and New Zealand Bank was the company banker. The company had sold Hay to Japan and export documentation was lodged with ANZ International Department for the collection of money from Japan. As a result of the sale, payment was made through an irrevocable letter of credit dated 20 March 1991 drawn on the Bank of Tokyo to be collected by the Australia and New Zealand Bank, which happened, and the ANZ Bank used the money in reduction of the overdraft that the company had with that bank. The liquidator said that there was no question of any private liability of the directors, as the Hon. Mr Roberts said, and that is not true.

The liquidator first sought to recover from the ANZ Bank as a preferred creditor, and that is what I thought would have been the usual procedure. However, the liquidator is now attempting to recover the money from the six directors on the basis that the directors had executed a personal guarantee in respect of the overdraft account. I expect that the reason why the liquidator switched from taking on the ANZ Bank to the six directors is that he did not fancy the idea of proceeding against a major bank and thought that the six directors might be easier game. There is nothing in any of the documentation or the facts or any of the claims made by the liquidator that the assets of the company were used to reduce the personal liabilities of the directors.

Mr Irving, after the Hon. Mr Roberts' statements, under privilege, of incorrect facts in this Chamber, wrote to the liquidator, Mr Bruce Carter. The letter, dated 23 February 1993, reads:

In view of the political consequences arising from statements made in the Legislative Council last week by Terry Roberts, MLC, under parliamentary privilege, I ask you to provide me with answers to the following questions:

(i) In the records of payments made by Hay Australia Pty Limited, have you found any payment made to Alan Irving, Robert Irving or Ruth Irving by way of wages, dividends, refund of expenses or any other payment to them personally or any other company in which you suspect they might have a beneficial interest?

(ii) Whether you are aware of any action carried out by Alan Irving, Robert Irving or Ruth Irving which could be described as 'asset stripping' for personal gain?

(iii) Whether you are aware that all cheques required the signatories of any two unrelated directors? Yours faithfully.

The reply, dated the next day, 24 February, to Alan Irving, reads:

Dear Sir,

Re: Hay Australia Pty Ltd (In Liquidation)

I refer to my appointment as liquidator of the abovenamed company and to your letter dated 23 February 1993.

In response to your questions I advise as follows:

(i) I have no evidence of any payments being made by Hay to any of the directors of the company.

(ii) & (iii) I am unable to comment in respect of these questions.

The Hon. T.G. Roberts: No evidence.

The Hon. J.C. BURDETT: No evidence.

The Hon. R.I. Lucas: Is that the liquidator?

The Hon. J.C. BURDETT: That is the liquidator. The liquidator, for all his traditional and conservative language, obviously had all the evidence that there was. Alan Irving, on the same date that he wrote to the liquidator in Hay Australia, wrote to the liquidator in the other company in question, Marawa Pty Ltd, but has not yet received a reply. So, first of all, the statement that Irving and other former directors of Hay Australia used the assets of the company to make payments to reduce their personal liabilities has absolutely no justification whatever. It is completely untrue. The person who would have the evidence, namely, the liquidator, has said that he has no evidence that that happened.

The second statement by the Hon. Terry Roberts to which I refer is from the same page in *Hansard:*

Here we have a company director not only with defunct companies but people who dishonestly moved money to him and his wife as directors so the company's assets could not be used to pay creditors.

The facts are that no money has been moved from either Marawa or Hay Australia to Alan Irving, Robert or Ruth Irving for any purpose. The receiver and liquidators have been called upon, as I have said, to confirm the fact: one has responded; the other has not yet responded. But no money has been moved from either Marawa or Hay Australia to Alan Irving or his wife or to Robert Irving.

The next statement that I refer to in relation to Marawa is:

The liquidator was unable to give any reasons for the company's failure because he did not have the company's books and records.

The facts are that the directors handed all records in their possession to the receiver, Mr Trevor Angas—not the liquidator but the receiver—appointed by the other parties, in respect of which claims are being made by Alan Irving. Marawa was subsequently placed into liquidation. The liquidator has experienced numerous difficulties in his dealings with the receiver, including that of obtaining the company's books and records from him, namely, the receiver—not from Alan Irving but the receiver. The other directors handed the books over. Mr Irving understands that the appointment of the receiver, and the receiver's activities in selling the company's assets, are being investigated by the liquidator. On two occasions he had reported matters of concern regarding the receivership to the Australian Securities Commission. That was in May 1991 and again in March 1992.

The next statement by the Hon. Mr Roberts to which I refer is that Irving Air Pty Ltd/Al-Ru Farm Pry Ltd 'failed to lodge annual returns for the two years'. The facts are that the 1992 returns were lodged in Adelaide on 29 January 1993, lodgement number 3296715, and receipted on 22 February 1993 by the Australian Securities Commission Melbourne office.

The next statement was that 'Irving Air has a fixed charge in favour of AIFC over a Cessna 210'. The facts are that this aircraft was the last of Irving Air's fleet to be sold and the finance on the aircraft was discharged about eight years ago at the time of sale. The next statement—

The Hon. T.G. Roberts: There's more to come.

The Hon. J.C. BURDETT: We will deal with the more to come' in the same way. The next statement by the Hon. Mr Roberts from the same page in *Hansard* was that 'Al-Ru Farm Pty Ltd has a fixed and floating charge created in 1989 created in favour of Beneficial Finance'. The facts are that five properties are owned by Alan and Ruth Irving, and their company Al-Ru Farm Pty Ltd and are the security for a single loan, originally with Beneficial Finance and now the State Bank. All monthly payments for the past 38 months have been paid on time. The State Bank continues to be the Irvings' and their companies' financiers.

The next statement by the Hon. Mr Roberts referred to 'the tale of a company called Porky Pigs'.

The Hon. R.J. Ritson interjecting:

The Hon. J.C. BURDETT: That seems to be a common theme at the moment, but the facts are that a piggery, reported to be one of the best in South Australia, was sold by the majority shareholders—which did not include Alan Irving and his wife; they were minority shareholders—causing loss to the minor shareholders. The minor shareholders sought to recover their losses but were forced to withdraw due to the cost of proceeding further. So they had nothing to be ashamed of in regard to Porky Pigs.

The next statement was the 'tale of an Irving plane'. A fleet of aircraft was operated by Irving Air on charter, aerial work and private hire and fly throughout Australia. All aircraft were subjected to a variety of accidents; all were reported to air safety and insurers. All were investigated and all claims have been paid. The accident referred to occurred in 1976. That was during refuelling, probably due to inadequate earthing of the aircraft.

A series of damaging and alarming allegations have been made against a candidate in the forthcoming Federal election, without any justification whatever and without checking the facts, and under Parliamentary privilege. However, for the reasons I mentioned before, I believe that the Bill to which I am speaking is, in principle, a good Bill. It will be examined in Committee, but I support the second reading of the Bill.

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

LEGAL PRACTITIONERS (REFORM) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 10 February. Page 1185.)

The Hon. K.T. GRIFFIN: The Opposition supports the second reading of this Bill. I want to raise a number of issues in considering aspects of the Bill. The very title of the Bill—the Legal Practitioners (Reform) Amendment Bill—is somewhat misleading, but I suppose the name is the way in which the Attorney-General wants this legislation to be perceived. If one looks carefully at the Bill, one could hardly call it a major reform Bill, although with the publication of the green paper in 1990, a white paper last year and the introduction of this Bill and the Attorney-General's own public comments about matters such as Queen's Counsel and restrictive practices allegedly followed by the legal profession, one can see that he really had to call this Bill a reform Bill to try to justify some of his earlier statements, but it is very far from being a major reform Bill.

The Hon. C.J. Sumner: What else do you want to do?

The Hon. K.T. GRIFFIN: I do not want to do anything more; I am just saying that the title is misleading in order to justify the program which the Attorney-General set out upon in 1990 and which reaches its culmination in this Bill.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: Of course, we must remember that the white paper is a Government document. The green paper was put out for public consultation, but the Government published the white paper. It is a Government policy paper. One would expect that, if the Government publishes a white paper purporting to be Government policy, ultimately it would be reflected in legislation but, as it turned out, some matters contained in the white paper are not the subject of this Bill, and I will deal with some of those aspects in due course.

It must be recognised from the outset that the practice of the law and the structure of the legal profession in South Australia varies significantly from the practice of the law and the structure of the legal profession in other States, particularly in the eastern States of Queensland, New South Wales and Victoria. In New South Wales, there is probably the most entrenched distinction between two branches of the legal profession—barristers and solicitors. In New South Wales there has been a great deal of animosity between the bar and solicitors, animosity that is not reflected in South Australia, which does not have that sort of tension, partly for historical reasons and also for reasons of good commonsense and because we have a much smaller legal profession than in New South Wales.

In South Australia, legal practitioners are admitted by the Supreme Court to practise as barristers and solicitors after undertaking exactly the same course of study at the university and the necessary prerequisites for admission to practice. That is quite clear from section 15 of the principal Act, which provides that a person who satisfies the Supreme Court that he or she is of good character, is resident in Australia and has complied with the rules of the Supreme Court relating to the admission of barristers and solicitors of the Supreme Court or in so far as there has been non-compliance with those rules he or she should be exempt from such compliance is entitled to be admitted and enrolled as a barrister and solicitor of the Supreme Court. The admission is as a barrister and solicitor of the Supreme Court.

As I have said, there is no distinction between barristers and solicitors in the course by which they come to be admitted as both by the Supreme Court. That is different in New South Wales and some of the other States. In New South Wales, as I understand it, there are bar examinations which have to be satisfied as opposed to examinations for solicitors. I think New South Wales largely follows the English tradition where there are, of course, inns of court for the training of barristers, and solicitors undertake a different program of study and satisfy other prerequisites to be admitted as solicitors.

In South Australia, legal practitioners are governed by the one piece of legislation in relation to discipline, complaints and conduct. Most barristers and solicitors are members of the Law Society of South Australia. There is a bar association, which has no statutory standing but which is an association to which many of the persons who practise solely as barristers belong. In South Australia, the legal profession is described as an amalgam or fused profession. The description 'fused profession' is taken up by the Attorney-General in the Bill before us. In South Australia, having been admitted as barristers and solicitors, legal practitioners have a voluntary option to practise in legal firms as barristers and/or solicitors or both or, if they so wish, not to practise in legal firms as barristers but to take a decision on their own volition to practise solely as barristers from chambers. Their chambers may also be their place of residence. Chambers generally provide office facilities for groups of barristers who share overheads but who do not have the same links at law as a partnership of legal practitioners.

Those who wish to practise as barristers within legal firms may be partners in a partnership with solicitors or they may practise as both solicitors and barristers in such a partnership. Section 6 of the principal Act provides that the Supreme Court may, on the application of the Law Society, divide legal practitioners into two classes—one class consisting of barristers and the other class consisting of solicitors—and the judges of the Supreme Court or any three or more of them may make such rules as they consider necessary to give effect to a division of the legal profession made under subsection (1). It is proposed by the Bill that that section be repealed and replaced by another section 6. I have no difficulty with the repeal of section 6, but I do have some difficulty with the replacement section proposed in the Bill, and I will address some more observations on that matter shortly.

The appointment of Queen's Counsel has been a matter of some controversy. I think there is some misunderstanding about Queen's Counsel, particularly in the wider community where some professionals have taken the view that QCs ought not to be appointed by the Governor in Council recognising excellence where those who have achieved certain professional competence in other professions are only recognised by their particular professions or, in some cases, by colleges, particularly in the context of the medical profession.

I think it is important to recognise that the legal practitioners are in a curious position. They are admitted to practice by the Supreme Court and in fact are officers of that court. They have a duty to the Supreme Court in the administration of justice, and in some instances that duty surpasses and overrides the duty which they have to their clients. That has some historical roots and I see no reason why the historical development of that relationship should be changed, either in relation to legal practitioners or in relation to Queen's Counsel. The courts are provided by the Crown for the resolution of disputes between citizens. They are loosely described as an 'arm of Government' in that they provide a forum for resolution of disputes between citizens, and for the disposition of criminal matters, where the criminal law is administered through those courts. It is appropriate that in that context legal practitioners have a duty to the courts. Because of the relationship of legal practitioners to the courts it is important to recognise that they are therefore in a quite different relationship to an integral part of the Crown's services to the community and are to be distinguished from the medical profession, accountancy profession and others.

In this State Queen's Counsel are appointed by the Governor-in-Council on the recommendation of the Chief Justice. It is a recognition of excellence and also a recognition that certain persons are leaders in their profession and ought to be available to the community in those complex and difficult cases requiring the level of expertise normally demonstrated by Queen's Counsel. The Chief Justice makes the recommendation after consultation with the other Supreme Court judges. For the past 20 years the Government of the day has respected the recommendation of the Chief Justice and has approved the appointment. There is in fact a discretion, but normally the discretion is exercised in favour of accepting the recommendations of the Chief Justice. The Chief Justice requires an undertaking to be given by those who are to be appointed as Queen's Counsel that after appointment they will not practise as solicitors or in a partnership of barristers and solicitors. That is for a reason to which I will refer later.

The appointment of Queen's Counsel in South Australia is quite different from that in New South Wales, and there has been some controversy about appointment in that State. I understand the appointment is recommended by the Bar Council after applications are called, and it is a situation where the courts do not have the significant responsibility that they have in South Australia. It is important therefore not to confuse the attitude which is held towards the bar and thus to some Queen's Counsel in New South Wales with that which applies in South Australia.

The Government's green paper and subsequent white paper resulted in a Bill. I understand that Bill was hastily presented to the Law Society in January. I think the Attorney-General must have just come back from leave. About mid-January on a Tuesday at 4.30 p.m. a fax was received at the Law Society with a draft Bill requiring a response on the draft Bill, which reflected a number of matters in the white paper, by lunchtime on the Thursday—less than 48 hours after the fax had been received. That was not in my view adequate time to allow consultation, and as I understand it, those members of the Law Society who were involved in considering that Bill also were offended by the requirement to respond to that Bill within such a short period of time.

The Hon. C.J. Sumner: What garbage.

The Hon. K.T. GRIFFIN: It was faxed at 4.30 on a Tuesday.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: Well, whether or not they were offended, you cannot tell me that, on issues as important as some of those in the Bill, two days is adequate time.

The Hon. C.J. Sumner: Two years.

The Hon. K.T. GRIFFIN: They only had the Bill for two days. It was not two years. It was the end of 1990 when you had a green paper and then you had a white paper in August of 1992. That is when your policy

decisions were published—August 1992. Then suddenly it arrived slap bang on the table in the middle of January when many people were away—some of us maintained activity, whether it be in Parliament or in other areas, whilst others were away. However, I think many of the legal profession were away, and it was a difficult time to expect a response on such a matter so quickly. I understand, though, that there have been some discussions since that time between the Attorney-General and his officers and the Law Society, as a result of which there have been some changes made to the Bill.

There is some suggestion there will be some further Government amendments, but I am not sure what they will be. Certainly, I will be seeking to make several amendments to the Bill. The Bill addresses a number of issues. Section 6 is to be repealed and a new section proposed. I think it is important to have a look at what that does.

New section 6(1) seeks to express Parliament's intention that the legal profession should continue to be a fused profession of barristers and solicitors. It is not really clear what that seeks to achieve, because the fact is that under the Legal Practitioners Act the profession is an amalgamated profession in the sense that practitioners are admitted as both barristers and solicitors. I would have thought that was the key to the whole debate about the structure of the legal profession. To suggest that Parliament intends that the legal profession should continue to be a fused profession when there has never been any other intention in the legal profession that that should be the case (and certainly there is no threat to that) seems to me to be quite unnecessary in the way in which it is proposed in that amendment.

Proposed subsection (2) provides that the voluntary establishment of a separate bar is not, however, inconsistent with that intention, nor is it inconsistent with that intention for legal practitioners voluntarily to confine themselves to practise as solicitors. That is permissible now under the principal Act, and it seems to me that it is quite unnecessary to be making that sort of statement in this amendment.

Then it goes on to deal with an undertaking which is a back-handed way of dealing with the current undertaking that the Chief Justice requires of those who become QCs. It provides that an undertaking by a legal practitioner to practise solely as a barrister or to practise solely as a solicitor is contrary to public policy and void. However, this subsection does not extend to an undertaking contained in or implied by a contract or professional engagement to provide legal services of a particular kind for or on behalf of another person.

Then the proposed section goes on to deal with other matters. The question of the undertaking is one that needs to be addressed. The present Chief Justice does require an undertaking. In a letter which he wrote to the Attorney-General in November 1990 and which was attached to the Law Society's response to the green paper, the Chief Justice does make some observations about Queen's Counsel. He mentions the green paper's reference to a statement that larger firms may acquire the services of in-house silk, thereby increasing their profile. The discussion paper dismisses that objection, with the comment that there was little evidence of this in the past when QCs were permitted to practise in firms in partnership with other practitioners. In response to that the Chief Justice says:

> The comment is not in accordance with the facts. There was a keen desire on the part of the large firms to have a silk in the firm and it was seen as a considerable competitive advantage. Indeed, there is on file in this court a letter written in 1972 from a partner in a leading traditional firm to the then Chief Justice complaining that no member of his firm had been appointed silk for 19 years and that by contrast another firm had two silks.

The Chief Justice goes on and says:

> I summarise my position by stating that the proposals in the discussion paper as to the appointment of Queen's Counsel are retrograde and deplorable. Theories may be spun in other jurisdictions but in this State we have had practical experience of Queen's Counsel practising in firms and the detrimental consequences of such practice. In other places the grass on the other side of the fence may appear greener to some, but there is no excuse in this State for reverting to a system which has been experienced and discredited. I foresee that if the proposals were implemented silk would come to serve no useful purpose but would become a mere empty honour or an appendage conferring a competitive advantage upon a large legal firm.

In that letter he also makes some reference to the proposals in the green paper to amend radically section 6 of the Legal Practitioners Act. He says (and I think it is important to quote from his letter) the following:

> Any consideration of this issue should begin with recognition of the vital role which the separate bar plays in the effective operation of the judicial system. The reasons are threefold.
>
> 1. There is contemporary emphasis upon efficient administration of the business of the courts whereby the resources provided to the courts are used to maximum effectiveness with a view to containing costs and minimising delays. That requires that hearings occur on the date fixed and that adjournments be not granted on the ground that the Counsel originally briefed is unavailable because of a conflict of engagements.
>
> For such a system to operate without injustice it is essential that there be a pool of competent counsel available to accept late briefs and to handle them capably. That pool is a separate bar. If there were no separate bar, or an inadequate separate bar, the courts would be faced with the necessity of adjourning cases to avoid injustice. There would be much wastage of judicial resources with consequent delays and additional costs. That occurred in this State before the existence of a separate bar and it is the bane of judicial administration in jurisdictions where there is no separate bar. An adequate separate bar is an indispensable requisite under present conditions of an efficient court system.
>
> 2. To practise at the separate bar has produced a marked increase in the skills of the barristers. The resultant improvement in the standard of advocacy greatly assists the court in reaching a just decision and reduces the time occupied in the presentation of cases. Both the quality and the efficiency of delivery of justice are thereby enhanced.
>
> 3. The separate bar provides a specialised service to the community. Barristers are able to devote the appropriate time to the preparation and presentation of cases without the constraints of the crushing overhead expenses of a solicitor's practice. The special skills which members of the separate bar are able to develop through specialisation enable cases to be disposed of more expeditiously and efficiently. Although so far as I know there have been no empirical studies on the point, there is much to indicate that the existence of the separate bar, at least where it

operates under the conditions and practices obtaining in this State, reduces rather than increases the costs of litigation.

Any weakening of the separate bar would therefore be seriously detrimental to the interests of the community both directly, by affecting the cost and quality of legal services available, and indirectly by undermining the efficiency and quality of the judicial system. Experience has now shown that legal constraints are not necessary to enable a separate bar to flourish. It has developed as a spontaneous response to a need.

Another letter that was attached to the submission by the Law Society was from Mr Justice Perry who, for a long time, practised as a QC in Adelaide. He was a senior partner in a well known Adelaide legal firm before he took silk, as have other Queen's Counsel, some of whom would have preferred to have stayed within their legal firms but who, with the benefit of hindsight, now believe that the decision that was taken to practise solely as barristers once they were appointed as QCs was one of the best things which happened to them personally and professionally and which enabled them better to provide services to the wider community.

Of course, one must recognise, if I can just digress for a moment that, whilst there is a lot of fuss made about Queen's Counsel and the undertaking by the Chief Justice, there are only something like 20 or so Queen's Counsel, so we are not talking about a large body of people in a profession of something close to 2 000 legal practitioners, as I understand it, and a relatively small bar by interstate comparisons.

We are talking about a group of people who very largely prefer to practise solely as Queen's Counsel. Mr Justice Perry does say that, when he was a barrister within his Adelaide legal firm, he acted for a range of clients such as the Chamber of Commerce and Industry and the Employers Federation, and only acted for them because his firm did legal work for them. He and the firm never acted for interests opposed to those two organisations.

However, once he became a QC, and practised at the separate bar, he was sought after not only by employer interests but also by unions and employee interests, so the experience that he had gained was then available to a much more broadly representative group within the community.

Mr Justice Perry also says that his firm acted for the Australian Hotels Association (now the Australian Hotels and Hospitality Industry Association) and never accepted any briefs to act against hotels and the interests of that association. When he went to the bar as a Queen's Counsel he found that he was receiving briefs to act for interests opposed to hotels and association interests and so, again, his expertise was available to a wider range of interests in the community. His point (and I quote from a letter that was attached to the Law Society submission) is that:

> The only way in which the services of Queen's Counsel can be made available to the public at large is to ensure that they practise at the separate bar divorced from any associations which could possibly limit their availability to accept a brief from anyone who may require their services.

He goes on to say:

> The suggestion (page 11 of the green paper), apparently stemming from recommendations of the Clarkson committee, that it would be sufficient if a person appointed to the rank of Queen's Counsel from a partnership should be required to demonstrate to the Chief Justice his or her availability to be briefed by other than members of the partnership is unworkable and out of touch with the realities of practice. Equally unworkable, I would suggest, is the proposal that something akin to the cab rank rule could apply to solicitors.

The other point which he makes and which I think needs to be reiterated in relation to Queen's Counsel is that their services are generally used, both in the commercial and in the criminal context, where a case is more difficult than the run of the mill cases, and where so much is involved that the client is prepared to pay for Queen's Counsel to act so that the client gains the benefit of that person's additional expertise and experience.

One of the issues which is raised in the second reading explanation and which does need to be addressed is the so-called two counsel rule. The Law Society has had a rule since 1985, some eight years ago, that does not require Queen's Counsel to be accompanied by a junior barrister, so that change is not something that is in this State a restrictive practice.

The assertion is also made that barristers are not permitted to attend at the offices of solicitors and that, too, is a furphy and has been for quite a number of years. On a number of occasions where there are complex cases legal firms will provide an office to a Queen's Counsel or other barrister to work on a particular case in the solicitor's offices, and it is not uncommon for QCs and barristers to attend at the offices of solicitors or even at the premises of a client. So, there is no restrictive practice in this State in that respect.

In respect of advertising, there has been a recent amendment to allow a widening of the advertising that is permissible by legal practitioners. I think it must have been about five or so years ago, maybe even longer, that the Law Society led Australia in changing its professional conduct rules to allow advertising.

It did not permit testimonial advertising but that restriction was a good thing. The last thing that people in the community need is testimonial type advertising when there is no opportunity to test the validity of the testimonial. So, there are a number of changes which have been made over the years by the Law Society in relation to professional conduct rules, which have eliminated the restrictive practices and which distinguish the South Australian profession from the profession in some other States.

The issue of contingency fees is one which is controversial. A provision in the Bill allows a legal practitioner to agree with a client to charge legal fees only if the case is successful, with statutory permission to charge fees in addition to the normal rate of fees. I understand that the professional conduct rules of the Law Society are to deal with the multiple of the fees which might be charged by way of an uplift to the normal fees, depending on the outcome of the case. Fortunately the proposition does not include a share in the award of damages and that is the offensive part of any proposition for contingency fees which we certainly ought to resist in South Australia.

I even have reservations about uplift fees as a form of contingency fee because what that does is to provide a personal interest in the case to the legal practitioner, which even in relation to uplift fees can have the effect

of distorting judgment and allowing or inducing the legal practitioner to put personal interests above those of the client. Certainly that is the view in relation to contingency which allow a share of the damages awarded to be recovered by the legal practitioner.

The Insurance Council of Australia expresses some concern about contingency fees generally but provided there are adequate controls on the limited proposition in the Bill it is prepared to go along with the proposition in the Bill. Of course, the insurance industry has the most to lose of any group in the community because they provide the necessary indemnities in insurance matters, which are more than likely to be the subject of action in which contingency fees are payable.

The Bill also provides for an annual report to be lodged by the Law Society with the Attorney-General and tabled in the Parliament in relation to certain aspects of the Law Society's statutory responsibilities. I have no difficulty with that. It is an important proposition and certainly can be supported, as can the proposition for reports by the complaints area of the Legal Practitioners Act, the Legal Practitioners Complaints Committee and the Legal Practitioners Disciplinary Tribunal. The Disciplinary Tribunal is to be required to hear matters in public or if heard in private for summaries to be provided for public inspection. Again, I do not have any difficulty with that proposition. The tribunal will need to be given powers, which it does not seem to me are given in the Bill, which allow it, for example, to exercise the power of a court in relation to suppression orders which should be used sparingly.

I think there is a problem in relation to matters such as defamation, which does need to be addressed. I would like the Attorney-General to give some consideration to what sort of additional protection, if any, the disciplinary tribunal needs to have to ensure that none of its members is at risk in relation to the actions which it might hear in public.

There are some other tidying up provisions in respect of which I want to raise one or two matters. The change to the professional indemnity policy to limit the claims (clause 13) does raise one issue. Where there is a claim in respect of a fiduciary or professional default occurring outside the State it is not to be the subject of indemnity unless it occurs in the course of or incidentally to legal work arising from instructions given in this State. I can understand the explanation for that where one has national firms, but a point has been put to me that there are some South Australian legal practitioners who actually take instructions interstate but do the work in South Australia. Whilst they do not expect defalcation to occur, it would seem that in those circumstances, where a problem did arise because the instructions were not given in South Australia, their clients would not be protected. It may be that that is an unnecessary concern, but it is an issue which I think is important, not with a view to giving the national firms and their clients additional access to funding to cover defaults and negligence but more to protect South Australian solicitors carrying on business in this State who do happen to take instructions interstate for a client who may be based in South Australia and may actually have a job interstate which that South Australian wants the South Australian solicitor to handle.

The Institute of Chartered Accountants and the Australian Society of Certified Practising Accountants have raised a number of issues through the Joint Legislation Review Committee, particularly in relation to audit. I merely flag them so that the Attorney-General can look at them. The proposal in clause 5, which is to amend section 35, provides an enhanced power for the auditor to obtain information. There is also a requirement for the manager of any financial institution to provide information to an approved auditor or inspector.

The Joint Legislation Review Committee does not quarrel with that, but it raises the question whether there ought to be some formal recognition of the status of an approved auditor or inspector to facilitate dealing with the manager of any financial institution. It may be only mechanical, but it is suggesting that there ought to be some clarification of the means by which that authority is established to the financial institution.

In relation to the definition of 'financial institution', the committee says that it may be helpful specifically to include a trustee company or a broker. It seems to me that is probably adequately covered by the reference to 'other body that carries on a business involving the acceptance of money on deposit or by way of investment'. As it has been raised, will the Attorney-General consider whether that expansion of the definition is necessary?

In relation to the amendment of section 37 in clause 6 dealing with confidentiality, the committee makes the comment:

> It is acknowledged that the environment in which practitioners operate now encourages the release of information that is on file within an auditor's audit file. I do comment, however, that in many cases the information on an auditor's file is really information duplicated from client records and the only unique matter in regard to an auditor's file is the extent of testing or opinion based upon that transaction.
>
> Whilst the practice of releasing information from auditors' files is now prevalent, shouldn't there be a procedure whereby the auditor acknowledges or confirms with either the Law Society or the client that information has been released from the file? This may not be seeking approval, but rather confirming the action and allowing the Law Society or the client to review the information released in the event that that information may be out of context when looked at in isolation in relation to a whole matter subject to review.

In relation to the amendment of section 53 in clause 9, which relates to a combined trust account, there is now in proposed subsection (10) the following provision:

> If a legal practitioner withholds money from deposit...or withdraws money.. .the auditor must, in the report on the audit for the relevant year, express an opinion on whether the withholding or withdrawal was justified, and if the amount exceeds the amount that could, in the auditor's opinion, be reasonably justified, on the amount of the excess.

The Joint Legislative Review Committee states:

> This section requires the auditor to report on the audit an opinion on whether the withholding or withdrawal was justified.
>
> Whilst the further watchdog approach on this section is desirable it does, however, leave the ongoing problem of accountant versus lawyer and the question of what was reasonable in the accountant-auditor's mind as opposed to the legal practitioner's mind.

In many cases legal practitioners review these matters in a different light to an auditor, and this is often compounded when an auditor would be auditing a trust account on an average of one to two times per year as opposed to a legal practitioner who is transacting on a trust account and dealing with clients on a daily basis.

It is acknowledged that this opinion which is being sought is desirable. However, it cannot be considered to be 'black and white'.

Whilst I cannot offer an alternative to the problem I perceive in regard to a legal practitioner's opinion versus an auditor's opinion, I ask that the section be further considered.

I raise that issue because I can see the point that the joint legislation review committee is making. It may be that it does require not only a reporting to the Law Society but a qualification as to the point which is being made in that observation.

Some other matters can usefully be raised during the Committee consideration of the Bill. As I said at the beginning, this Bill is hardly a significant reform measure requiring the description of reform in the title. It does make some changes, but they are not so radical changes as were first proposed in the green paper, then in the white paper and as perceived in some areas of the public. The withdrawal from some of the controversial propositions is a good thing, and certainly I commend the Attorney-General.

The Hon. C.J. Sumner: Which one?

The Hon. K.T. GRIFFIN: The barrister's liability for negligence. The power to pass regulations dealing with restrictive practices.

The Hon. C.J. Sumner: There is no need for them.

The Hon. K.T. GRIFFIN: No, I know. Well, there never were any restrictive practices anyway. That was a bit of huff and puff. I commend the Attorney-General for not proceeding with some of those matters which I would have thought were unnecessarily confrontationist and really did not achieve any useful purpose.

There is, I suppose, the broader issue of the cost of access to justice. It is always a difficult issue to address. Governments and courts have to accept some responsibility for that in the procedures which they require to be complied with in the courts process and some of the costs which are imposed. It is interesting to note that transcripts, hearing fees, issuing fees and other costs which are imposed by courts in dealing with process do add up quite significantly and provide a considerable burden to those seeking to obtain justice in the courts system. However, that is an issue that one can leave to another date. I support the second reading of the Bill, as I indicated at the beginning. I will raise a number of issues at the Committee stage. I will propose some amendments, and I would hope that some of the questions which I have raised at least give notice to the Attorney-General on matters which are not controversial but which hopefully can be resolved during the later debate.

The Hon. C.J. SUMNER (Attorney-General): I thank the Opposition for its support for this Bill. It now becomes a Committee Bill. I will examine the technical matters raised by the Hon. Mr Griffin and provide responses during the Committee stage, and if necessary I will have amendments drafted in relation to the question of indemnity insurance and the other matters raised by the Institute of Chartered Accountants and the Australian Society of Certified Practising Accountants. Although the honourable member tried to suggest that this is not a reform Bill, I believe he is wrong. I think it contains some significant reforms.

The honourable member said that the Government has not gone on with all the matters in the white paper—that is true—although it has proceeded with almost all the matters, except those where the Law Society has agreed to amend its professional conduct rules. It has done that in a number of areas. It has done that in the area of advertising and in the area of providing information to clients about the conduct of the case and about costs. It has particularly been done in the area of acknowledging that the restrictive practices which exist in other States as between barristers and solicitors do not exist here in South Australia. As a result of that policy decision by the Law Society and its decision to regulate itself in relation to these matters there was no need for those items to be considered in the Bill. However, the principles in the white paper on those matters have been accepted and put into practice in the Law Society's regulation of the profession.

I note the point made by the honourable member relating to the disciplinary tribunal and I will have that matter looked at to see if an amendment is necessary. The honourable member has said that there is no need for a statement relating to the fused profession. I disagree very strongly with that. A debate is raging in the eastern States about this issue, particularly in New South Wales, Victoria and Queensland.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I know the context that it is in, but I think that it would be salutary for the legal profession around Australia and for the Australian community to know that one State wants to make it quite clear that it is a fused profession and that it intends to continue as a fused profession.

The Hon. K.T. Griffin: It has always been.

The Hon. C.J. SUMNER: It has always been a fused profession, of course. However, there has been the development of a strong separate bar. There is no doubt that there are some members of that bar, particularly, I suggest, some of the more junior members, who would probably have a personal opinion in favour of having a legislated separate bar. The fact is that the current Legal Practitioners Act provides that the Supreme Court can split the profession and I want to delete that. I want to lay the issue to rest. I want statutory recognition that in South Australia the profession is fused.

The Hon. K.T. Griffin: It is obvious without that.

The Hon. C.J. SUMNER: It is not. It will end the argument as far as this State is concerned and, in my view, it will provide a very important example as to what can happen in reform of the legal profession for other States in Australia, in particular in reducing the anti-competitive and restrictive practices which exist and which, for the life of me, I cannot follow the justification for, in New South Wales, for instance. It might be of interest to the Hon. Mr Griffin that his colleague Mr Hannaford in New South Wales is of the same view. He is taking on the bar in that State and in a recent

discussion paper he has proposed that the profession in New South Wales should be fused.

That is, in my view, the way the legal profession should go in this country. There is not much doubt, in my mind, that it will happen over time. I think South Australia should take a stand, take a lead, legislate for it and provide that example to the other States. I would be very disappointed if the honourable member saw it otherwise, particularly as the Law Society is quite happy with the proposal. In fact, the society supports the Bill as it was introduced by me. The fact that we say that the profession is fused does not prevent the establishment of a separate bar. It enables people to practise how they wish. Once admitted as barristers and solicitors they can practise in the manner that they prefer.

That may be as solicitors exclusively or barristers and solicitors in firms or on their own, as barristers substantially but not members of the Bar Association (that is, taking instructions direct from a client in some circumstances) or as barristers in the traditional way. Our profession allows that, and I want to see that affirmed in legislation. The honourable member then dealt with the question of the undertaking of the Chief Justice. I was not sure what view he was taking of that issue, whether or not silk should be—

The Hon. K.T. Griffin: I am quite comfortable with the undertaking.

The Hon. C.J. SUMNER: The honourable member says he is quite comfortable with the undertaking. It means that Queen's Counsel cannot practise in firms. The amendment introduced by the Government would mean that the undertaking that has been required is of no effect. I have to say that I disagree with the Chief Justice on this point. I have always disagreed with him on it. I do not agree that the abolition of the undertaking would be a retrograde and deplorable step. I take the view that, if you start from the position that the profession in South Australia should be fused, that is something that should apply to all practitioners, including Queen's Counsel. Queen's Counsel should be able to practise in the manner that they see fit, either in firms or at the separate bar if they wish.

My own view is that most of them, if they continue to be appointed, will practise at the separate bar, but there may be some who will not, and I cite the example of barristers who have worked all their professional life in firms, it may be even small firms on some occasions, or firms who have done basically welfare law, but take silk and are forced to leave that firm without the expertise that was able to be offered by Queen's Counsel. The problems to which the Chief Justice refers on this point may have been related to an earlier period when there were some doubts as to how Queen's Counsel were appointed, with suggestions that deals were done between the court and the Government as to who should be appointed, with prominent firms of solicitors wanting their particular person to be appointed. That has all gone since the Supreme Court made recommendations for the appointments and the Government accepted those recommendations. In other words, the appointment of Queen's Counsel now is made on merit by the court, and if that is in place, it seems to me that the mischief that the Chief Justice saw in the earlier system of appointment of Queen's Counsel is removed.

All I can say is that I disagree with him, and if you are to have a properly competitive profession in South Australia, a fused profession in which restrictive practices are removed, this restrictive practice needs to be removed otherwise you get a tendency towards a separation of the profession. If you start from the assumption that I have, that the fused profession is the best way to deliver legal services in this State, then it also follows that the undertaking required by the Chief Justice should no longer be required.

I point out that the New South Wales Law Reform Commission in its report on the reform of the legal profession in the early 1980s was very critical of that undertaking as it saw the undertaking to be the cornerstone, if you like, of the development of the separate bar and possibly the subsequent creation of a separate bar on a legal basis. I repeat: I have absolutely no problem with people practising as barristers at the separate bar if they wish. All I want to provide for is that all lawyers, once admitted, as barristers or solicitors, whether Queen's Counsel or not, should be able to practise in the mode that they choose, and that is one of the things this Bill is designed to achieve.

The general question of Queen's Counsel is not specifically dealt with in this Bill. The Government takes the view that Queen's Counsel should not continue to be appointed for all sorts of reasons but, in particular, because it gives legal practitioners a certain cachet in the profession and the community that enables them to charge fees that are significantly higher than those charged by ordinary barristers. That in itself provides an anti-competitive element. However, the Government has determined that that issue will be revisited later when it ascertains what has happened in the other states, including in New South Wales where the present Liberal Government with Attorney-General Hannaford and Premier Fahey have made it quite clear that they do not intend to appoint Queen's Counsel any more and are producing legislation to that effect. The situation in other States is less clear. The Government will revisit this issue when the position in the other States is better known.

That was one of the issues in the white paper that is not addressed in the Bill for the reason I have outlined. The other issue concerns the question of barristers' immunity from suit for negligence. The Government supports the abolition of the immunity but believes that it needs to be done, if possible, on an Australia-wide basis. That matter will be revisited at some time in the future.

I think the Bill is an important reform. If we pass this Bill, we will have the optimum situation as far as regulation of the legal profession is concerned. While it removes anti-competitive practices, it does not deal completely with all the problems of the costs of justice. However, at least in so far as the costs of legal representation are a component of the overall costs of justice, we will ensure with this Bill the removal of restrictive practices and that we have as competitive a profession as possible. I believe that, importantly, we will be providing a lead to the rest of Australia in how to organise the legal profession, and over time, probably sooner rather than later, given the movement in other States, we will see something similar to what exists in South Australia being introduced in other States.

Bill read a second time.

DOG CONTROL (DANGEROUS BREEDS) AMENDMENT BILL

Adjourned debate in Committee (resumed on motion).

Continued from page 1353.)

Clause 9—'Controls relating to prescribed breeds.'

The Hon. M.J. ELLIOTT: When we were last considering this clause, I expressed some concern that it was not adequate. In particular, it provides that a dog while on the premises of the owner does not need to be muzzled or secured. I noted that, being on the premises, the dog may be unrestrained and, if there is not an adequate fence or closed gate, that dog could very quickly be out on the footpath and could do exactly what this legislation is attempting to stop, that is, to attack somebody. So, I move:

Page 2, line 37—Leave out 'on' and insert 'confined to'.

So, that part of the clause will read:

...except while the dog is confined to premises of which the person who is responsible for control of the dog is the occupier.

The occupier can confine the dog by keeping it inside, by keeping in the back yard in some way or, if the animal is in the front yard, obviously they will need a high fence and a gate that is closed, or they will have to chain the dog, as would be required of anyone in any other circumstance. It is a simple amendment, but it removes the one small problem that I saw remaining in the Bill.

The Hon. ANNE LEVY: I am happy to accept that amendment. I think it certainly clarifies what the honourable member intends and it removes any possible ambiguity. The Minister responsible had indicated to me that he had felt that the question of adequate fencing could be covered in regulations to the Act, but there is certainly nothing undesirable about having it placed in the Act itself rather than in regulations. I may say that I have not had time since the honourable member raised the question to speak with the Chair of the Dog Control Committee, which is set up under the principal legislation which this Bill amends. He will certainly be consulted tomorrow and, if he feels there are problems or that different wording would be desirable, I guess that matter can be attended to when the Bill returns to the other place for its concurrence to any amendment. I would be surprised if the Chair of the Dog Control Committee did not agree with this amendment, but I mention this as a caveat in case the Minister in another place feels that a further amendment to the amendment would be desirable.

The Hon. BERNICE PFITZNER: I would tend to support this amendment, as it relates to prescribed breeds of fighting dog, which would be very powerful dogs and which therefore would be able to jump ordinary fences. I have witnessed those sorts of dogs do exactly that. I always have a great distrust of putting things into regulations, so if they can be put into the Act I would prefer it. I therefore support the amendment.

Amendment carried; clause as amended passed.

Clause 10 passed.

Clause 11—'Evidence.'

The Hon. BERNICE PFITZNER: I want to ask for some clarification. Whereas I can understand the complaints in relation to control of a dog, an unregistered dog or a prescribed breed, I find it difficult to take as a point of practical consideration how someone would be able to identify that the animal is desexed, taking into account that these dogs are supposed to be of a vicious and aggressive nature. How would one make an allegation or a complaint that the dog was not desexed?

The Hon. ANNE LEVY: I am not a veterinarian—

The Hon. M.J. Elliott: Pups would be a dead giveaway.

The Hon. ANNE LEVY: I presume that if there was such a dog with a litter it would be fair to say that the bitch had not been desexed, and it would be a fairly logical ground for complaint. However, I do not know. We do not have a vet in the Chamber. If the honourable member would care to consult with her colleague the member for Light in another place, he might be able to enlighten her.

The Hon. BERNICE PFITZNER: Perhaps the Dog Advisory Committee could enlighten us on it and bring back a written reply.

The Hon. ANNE LEVY: I am happy to ask if it would care to comment on this matter.

Clause passed.

Title passed.

Bill read a third time and passed.

GOVERNMENT MANAGEMENT AND EMPLOYMENT (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 November. Page 767.)

The Hon. R.I. LUCAS (Leader of the Opposition): The Liberal Party supports the second reading of this Bill. In general terms we support the major principles outlined in the Bill, although we have some questions about some specific areas and intend to move some amendments in the Committee stages. It is important in the Act that the Parliament exhibits the right balance between greater flexibility and the rights of individuals. There is no doubt that, if we are to have a more efficient Public Service in the 1990s and the next century, as the Arthur D. Little and a number of other reports have recommended, we will need to have greater flexibility in our Public Service.

We will need to have a more flexible and manoeuvrable Government Management and Employment Act. To that extent the Liberal Party is and has been prepared to support significant change to the operating guidelines under the Act. However, as I said, there needs to be a balance in relation to the greater flexibility that is required for an efficient Public Service, while ensuring that the rights of individuals are not disregarded. The rights of individuals for members of the Liberal Party are important. We believe that the rights of individual public servants are equally important and, through the second reading and Committee stages of the Bill, we will be asking questions about the rights of individual members of the Public Service and moving amendments

to seek to protect the rights of members of the Public Service.

In doing so we are showing that we are not small minded about these matters. Members of the Public Service Association and others are not great friends of the Federal Coalition and the Liberal Party. By way of the national campaign against the Coalition and some of the claims that they have made about prospective policies of the Liberal Party or of a Liberal Government, it might have been easy and cheap revenge politics for the Liberal Party in effect to say, 'A pox be on your house, and we will not support a consideration of the protection of the rights of individual members of the Public Service,' as has been urged upon us by the Public Service Association. As I said, we have properly and rightly in my judgment rejected that, and we are considering the legislation on its merits.

The only other general comment I want to make is in relation to my own personal view of the role of the Public Service. I would like to place on the record, as I have done in the past, that personally I do not support the American style of civil service or Public Service where, as each new Administration comes in, the whole of the Public Service from top to bottom is turned over and rooted out—the Democrats are moved in and the Republicans are moved out or *vice versa.* The model we have in Australia, which is closer to a model of an apolitical Public Service—a service which should serve Governments of all political persuasions fairly and impartially—is the sort of model which I would like to see here in South Australia and which I believe is the sort of model that I would wish a Liberal Government could serve with here in South Australia.

With those general comments, I now turn to some of the specific matters in the legislation. I intend to outline at the second reading stage our initial consideration of some of the important aspects of the Bill so that at least I can place on the record our current thinking in relation to these matters. I will be interested in hearing the views of other members in this Chamber. As I said, I think we will spend productive time in Committee seeking a resolution to some of these questions.

The first matter I turn to is the question of the basis for appointment to the Public Service as outlined in section 50 of the Government Management and Employment Act. Section 50 allows for appointment to the Public Service on the basis of three conditions: first, a permanent basis; secondly, a temporary basis; and, thirdly, on the basis of negotiated conditions. The first category—permanent—covers what we know as permanently tenured full-time employees and permanently tenured part-time employment. Temporary employment is employment up to a period of two years and, by its name, is employment obviously of a temporary nature and, at the end of that period, the person employed no longer continues in employment with the Public Service. The third basis is that of negotiated conditions under which the Government has employed people on casual conditions, fixed term contracts and fixed term contracts with negotiated conditions.

One of the changes that we see in the legislation before us is that employment on the basis of negotiated conditions is split into three new categories—casual employment, fixed term employment and fixed term contracts with negotiated conditions employment. As I have indicated, it is really not adding too much more in the way of options for the Public Service over and above what already exists. For example, I refer to a South Australian Public Service Board personnel administration delegations circular of 13 December 1982 which outlines the basis of casual employment as follows:

> Casual employment is defined as full or part-time hours for a continuous period of less than one calendar month or for an irregular pattern of hours, i.e., to no set pattern, or for less than 15 hours per week. Examples of casual employment are work on a full-time basis for three weeks, work on an on-call basis during any working day, total working hours variable up to 30 hours per week, work for any three days per week but not on fixed days and work for five days per week but for only two hours per day, i.e., a total of 10 hours per week.

Casual employment, therefore, has been a feature of the South Australian Public Service for over a decade now, and perhaps even longer. It has been supported by the Public Service Association as one of the options during that period so the option that we see in the Bill before us for casual employment again is nothing radically new.

In relation to the negotiated conditions category under the current Act, section 50, I again refer to this time a Commissioner of Public Employment Circular dated 6 June 1990 under the section 'Appointment Categories, negotiated conditions' and I quote:

> May be used to meet specific employment situations such as the following:
>
> - in the interests of effective management;
> - if normal processes have failed or are unlikely to succeed in locating a suitable person;
> - if duties are to be of a limited term (usually for more than two years—otherwise temporary appointment would be suitable), or the future funding is uncertain (e.g. industry funded research positions).

Some Commonwealth funded positions have sometimes been employed under the negotiated conditions category. That is an indication of the negotiated conditions under the Commissioner's circular, 6 June 1990 and further:

> Conditions which may be negotiated include:
>
> - remuneration;
> - termination conditions and period of notice;
> - use of a motor vehicle where the nature of the position requires a motor vehicle to be available;
> - reimbursement of telephone rental and calls under certain conditions'
> - reimbursement of, or contribution towards, cost of accommodation;
> - allowance for, or reimbursement of, expenses in specified circumstances;
> - reimbursement of expenses associated with taking up appointment;
> - the term of the appointment, which is usually more than two years and would not normally be expected to exceed five years;
> - special leave provisions for particular purposes, e.g. professional development;
> - agreement to provide a certain amount and type of training;
> - special allowances in addition to salary.

Mr President, as you can see, the current GME Act, under the category of 'Negotiated conditions', does allow an extraordinary range of flexibility in relation to the

negotiation of special conditions for appointees to the Public Service.

In relation to clause 50, I seek information as to the category in which certain senior appointments have been made by this Government and in particular I refer to the appointment of Dr Ian McPhail as the Chief Executive Officer of the Department of Education, Employment and Training and also coordinator, I believe, of that department, and also Mr Peter Crawford who is Chief Executive Officer of the Premier's Department. Looking at the current clause 50 I assume that both persons, certainly Dr McPhail, were appointed on the basis of negotiated conditions. As I understand Dr McPhail and Mr Crawford are employed on a contract basis.

Under clause 54, which outlines the provisions applying to an appointment on the basis of negotiated conditions, subclause (4)(a) states:

A person shall not be appointed on that basis unless selected through selection processes conducted in pursuance of this Act.

I seek a response from the Minister as to whether Dr McPhail and Mr Crawford for example were appointed, and I take those two only as examples, under the provisions of negotiated conditions under section 50 of the Act, and if they were whether they were appointed on the basis of the selection processes conducted in pursuance of the GME Act. That is, under those selection processes was a panel constituted, who was on the panel and were all the procedures of the GME Act followed? If they were not, I seek a response from the Minister, or from the Commissioner for Public Employment, and through the Minister, as to the basis on which Mr Crawford and Dr McPhail were appointed if they were not appointed on the basis of negotiated conditions.

The only other point I make in relation to the flexibility that is now introduced on the question of basis of appointment is that, as I understand it, the distinction that is made in the Bill between a fixed term appointment and a fixed term plus negotiated conditions appointment is that a fixed term appointment would be used only for some permanent public servant who has moved from one position to another for a fixed term, and that person does not need to resign from the Public Service whereas, for an appointment on the basis of fixed term plus negotiated conditions, that person would need to resign from the Public Service. I would seek clarification from the Minister that my understanding of the distinction between those two categories is correct.

Is it intended that, if someone is to be appointed on the basis of those fixed term plus negotiated conditions criteria, a person currently employed in the Public Service would need to resign and be reappointed on a contract basis, obviously, for a fixed term and on the basis of negotiated conditions? Secondly, are the negotiated conditions I referred to from the Commissioner's circular of 6 June 1990 (and which I have now read into the *Hansard*) the negotiated conditions that are likely to operate under the amended GME Act or do the Government and the Commissioner intend to add any further negotiable conditions to that list I placed on the public record?

I now turn to the area that has attracted most consideration, and that is in relation to the appeal process under the Government Management and Employment Act. This has been the area most fiercely opposed by the Public Service Association, and I refer to its submission to me and to other members, page 9 of which states:

The ability to apply for an appeal against the appointment of another applicant to a position is an important counterforce to nepotism and patronage. While there are very few promotion appeals lodged in any given year—

The Hon. L.H. Davis interjecting:

The Hon. R.I. LUCAS: —the fact that they can be lodged is industrially useful. If they did not exist, these matters would be referred to the Industrial Commission. The proposed amendment gives the CPE the right to unilaterally decide the classification level above which promotion appeals cannot be heard. There is nothing to stop him outlawing all appeals over the base grade (ASO1). This is wrong and, in all likelihood, will result in industrial confrontation.

As my colleague interjected, there have certainly been some questions about nepotism and patronage in the Public Service over the years and as recently as today, with some quite serious allegations being made about a prominent member of the Left wing, the Hon. Kym Mayes, and nepotism and patronage in which he indulged in relation to the employment of a number of people in the TAB. But that is a matter for debate in another Chamber, and I am sure, public debate as well.

The Hon. L.H. Davis: Nepotism under the Labor Party is a disease: it is on the free list.

The Hon. R.I. LUCAS: It is an epidemic. I now refer to a report of the Presiding Officer of the Promotions and Grievance Appeals Tribunal for the year ended 30 June 1990-92 on the subject of promotion appeals, as follows:

In real terms, therefore, the number of primary promotion appeals received in 1991-92 was 101, which is actually the lowest figure for any year in the past decade. That fact can be seen from the figures shown in column 4 of the table set out on page 6. Not surprisingly, therefore, the number of promotion appeals heard by the tribunal was down on the previous year (by 48 per cent). On the other hand, the number of grievance appeals dealt with was 33 per cent up on 1990-91. The Final Report of the Review of Public Service Management which was published in February 1985 considered that 'to a certain extent, appeal rights provide a safety valve in areas of personnel management, particularly as a form of independent redress against poor or incompetent management decisions. However, the availability of a safety valve should not provide an excuse to avoid efforts to improve personnel management practices. Indeed, appeal processes which absorb considerable time and resources would often be unnecessary if proper effort had been devoted to basic management and employee relationships.

Further, on page 3, under the heading 'Future of the Appeals System' the following appears:

It is not my intention to debate this as an issue because it is a policy matter outside of my control. However, it is of interest to note the two (2) recent significant reviews in South Australia both gave qualified support for the retention of the appeals, namely:

* The review of the GME Act (1989)
* The review of Equal Employment Opportunity in the South Australian Public Service (1992).

There is much more useful information in that report but time, at this late hour of the evening, does not permit me to place it on the record, I know much to the disappointment of my colleagues. It is interesting

reading, and it is useful because certainly I, and I think many others, believed that the whole Public Service was grinding to a halt on the basis of hundreds if not thousands of promotion appeals being lodged throughout the Public Service.

Certainly, that report and the information from that tribunal gives a factual answer to that particular view that is, as I said, widespread, and it certainly has been influential in our thinking in relation to the appeal process mechanism and some of the criticisms that have been made. Certainly, also, as a philosophy and as a general principle, we support the view that the PSA has put to us in that respect that some reasonable appeal mechanism is a safety valve against nepotism and patronage, which can and does exist within the Public Service.

I am surprised that representatives of the workers, like the Roberts twins—the Hons. Ron and Terry Roberts opposite from me at the moment—would be supporting Government legislation and changes that quite clearly took away the individual rights of workers in the Public Service as they are at the moment by their wholehearted support and their Government view in relation to amendments to the Government Management and Employment Act. Unlike the Hon. Messers Roberts—the Terry and Ron variety—the Liberal Party is interested—

The Hon. L.H. Davis: Roberts squared.

The Hon. R.I. LUCAS: Or Roberts flattened, as in the earlier debate this evening on the Whistleblowers legislation—the Liberal Party is interested in the individual rights of workers and their appeal rights, and we are currently having discussions with Parliamentary Counsel and others in relation to a proposal for a reasonable system of appeal rights within the Public Service, and we will be exploring that during the Committee stage.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: I say to the Hon. Terry Roberts that some of us are prepared to stand up for the rights of workers, and some of us are not prepared to lay down and slavishly support their Minister, their Government and their Premier as they take away all appeal rights, as the Hon. Terry Roberts is doing at the moment for workers in the Public Service. So, for the *Hansard* record, I say to the Hon. Terry Roberts or the Hon. Ron Roberts that I would not stick my neck up too high in relation to—

The Hon. L.H. Davis: He has turned his back on his union mates, hasn't he.

The Hon. R.I. LUCAS: Exactly. Maybe the Left do not have control of the PSA.

The Hon. L.H. Davis interjecting:

The Hon. R.I. LUCAS: I will not be diverted, Mr President. The Liberal Party is considering an arrangement whereby Parliament would have some say on the dividing line above and below which a different system of appeals would operate within the Public Service. There would be a level prescribed by legislation below which there would be a restricted form of appeal and above which there would be no form of appeal, as exists at the present time. The current arrangement is that at the executive level of the Public Service there are no appeal rights but below it there are very broad appeal rights.

We are saying that that level or dividing line ought not to be a matter of proclamation or decision by the Government and the Minister but a decision taken by regulation where the Parliament can have a say about whatever that level ought to be. It may be that the level will stay as it is at the moment—at the executive level—or maybe it will come down a bit, as it has in the Commonwealth Public Service. Above that level there would be no appeal, but below that level there would be a reasonable level of appeal for individual public servants. They would be able to appeal on the grounds of nepotism, patronage or serious irregularity in the appointment process. However, they would not be able to appeal on the basis that, 'You appointed Terry Roberts and I was unsuccessful. I happen to think that I am better than Terry Roberts. I therefore think the whole process should be gone through again.' That is something I describe as an individual view about the respective merits of the two candidates for the position.

We are saying it ought not be an opportunity for the whole process to be gone through again, but it ought to be an appeal based on a protection that there is not nepotism or patronage or a serious defect or irregularity in the selection process, or some other serious irregularity along those lines. So, that is the scheme of arrangement that the Liberal Party is considering and, as I said, we are having amendments drafted and further discussions in relation to that.

The next area to which I would like to refer is in relation to clause 23 of the Bill. This clause refers to schedule 2 of the Government Management Employment Act. This particular matter has a very long history in this Parliament. It is an attempt by the Government to be able by proclamation only—that is, without any reference to the Parliament—to include in the GME Act, or categorise as public servants, teachers and other officers employed under the Education Act and the Technical and Further Education Act 1976. The current GME Act (schedule 2) quite clearly excludes teachers as public servants—they are employed under their own respective Acts; they are a specific exclusion.

This is the Government's second or third attempt in the past five years to give it the power, by way of proclamation, in effect to say that teachers are public servants and should be employed under the Government Management and Employment Act. As I said, this has a long history. Those members with a long enough memory will remember that back in 1987, as a result of a dispute over TAFE principals, I moved a motion to protect the rights and interests of TAFE teachers and teachers in the Education Department. Finally the Government was forced to back off. I note that the Hon. Mr Elliott has an amendment on file in relation to this matter, so he clearly is of the same view. I indicate that the Liberal Party intends to support the Hon. Mr Elliott's amendment.

I will now read briefly from correspondence with Angas Story, an industrial officer with the Institute of Teachers, dated 25 November 1992, a time when relations between the Institute of Teachers and the Liberal Party were more cordial than its most recent edition of the journal might indicate. Angas Story's memo to me reads:

Thank you for sending a copy of the proposed changes to the GME Act, particularly as they affect education and TAFE Act employees. The institute sees no good reason to amend schedule 2 in the way proposed.

Under the heading 'Reasons', it goes on:

As the second reading speech (page 3) says, 'When the Act was proclaimed a number of special employment groups were not incorporated into the Public Service. This was done in order to ensure that those groups retained their independence from the Public Service. We agree. However, we do not accept that part of the second reading speech which says, 'It was also intended that the Governor would have residual powers under the Act to incorporate into the Public Service some of those excluded groups as required by the Government.'

The Full Supreme Court *(Read v State of South Australia)* gave two principal reasons for rejecting that view.

1. 'It seems to me, to say the least, a surprising parliamentary intention that persons whose independence it had provided for, by excluding them from the Public Service, can subsequently be included in the Public Service by simple proclamation and without reference to Parliament.' (MathesonJ.).

The second quote from Chief Justice King is also referred to by Angas Story. It is a clear indication of the attitude of the Institute of Teachers. It is a view that we share and clearly the Hon. Mr Elliott shares it as well. We indicate our intention to support that provision.

The third area to which I refer relates to the Chair of the Appeals Tribunal. The Chairperson at the moment must be independent of the Public Service. The Government's intention in the Bill is to change that so that it need not necessarily be so. We support the view of the PSA and others who believe that the Chairperson of the Appeals Tribunal ought to be independent of the Public Service, and we intend to move an amendment to that effect.

The next area relates to suspension without pay. There is a provision within the Act that public servants can be suspended with or without pay. The Public Service Association in submissions to members has expressed its opposition to this provision, although there is no change to that provision in the Bill. However, I place on the public record that until recent days the PSA, under perhaps different leadership in the past, has been a consistent supporter of the provision to allow for suspension without pay. I have been provided with a copy of a memo from Mr Kevin Crawshaw dated 9 March 1990 to Mr Andrew Strickland, which reads:

Further to your correspondence to this association dated 10 January 1990, pertaining to proposed amendments to Commissioner Circular No. 6, we wish to advise you that your proposed recommendations for alteration are acceptable to this association. We request that this circular be issued at your earliest convenience. We apologise for the delay in responding to your correspondence.

Commissioner Circular No. 6, which deals with discipline and disciplinary appeals, clearly provides for suspension with or without pay. It is permissible for individuals or associations to change their minds on matters. The PSA has now put the view to us that it has been a longstanding position of that association that it does not support suspension without pay. I find this a very difficult issue to consider, and we have not resolved our thinking on this aspect of the Bill as yet. There is a strong argument that a person is innocent until proven guilty. If someone is being charged with a particular offence, to suspend them without pay when they might not have any personal circumstances to provide for themselves or their family, and children in particular, during the period when they fight to prove their innocence, places an individual member of the Public Service in a very difficult position.

The PSA has indicated the example of two correctional services officers who were suspended without pay and who were subsequently found to be not guilty. Of course, they were not paid through some period before they were able to be placed back on the payroll. It is small comfort for some people to eventually be placed back on the payroll if, as I said, during that period they do not have the personal circumstance where they are able to provide for themselves and their family, children in particular, during that period.

However, I do see the other side. This does not necessarily relate to this State, and I cannot recall any examples, but I know that in other States there have been prominent public servants who have committed, or who are alleged to have committed, heinous cries or acts, and the notion that those persons might be suspended on full pay whilst they await conviction—and we are talking I suppose of circumstances where it is quite evident that they were guilty of a particular crime—is a situation which is likely to be greeted with much opposition from the general community. So, I acknowledge that there are two sides to the argument.

As I said, we have not resolved our thinking as yet on this aspect of the legislation, and I would be interested in other member's views on how it might be resolved. Two options have been floated with us. One option is that the person might be suspended with pay, but if they are found to be guilty there should be some provision for repayment taken out of their severance or long service leave pay when they leave the Public Service having been found guilty. But it is difficult to draft something that might cater for that. The other option that has been floated is that there be suspension without pay, or perhaps some appeal provision to the Promotion Grievance Appeal Tribunal, if there is not already, perhaps on the basis of hardship or perhaps other grounds which might be considered. Both of those options are worthy of at least exploration; there may well be others. But I just list them at this stage and would ask members who have an interest in this matter perhaps to consider those options, and any others, because it is a difficult issue and we readily concede that it is not black and white.

The last issue that I want to address is the question of what we know as tap on the shoulder appointments or what in part is referred to within the legislation as temporary promotional reassignment. Temporary promotional reassignment does not appear in the current Act, as it is a new term. 'Tap on the shoulder' I think does gives a better understanding of what is actually going on.

The Hon. T.G. Roberts: Anointment!

The Hon. R.I. LUCAS: Anointment, yes. On that last issue of suspension without pay, I would ask the Commissioner for Public Employment to indicate, to the best of his knowledge (because I understand figures are not collected) how any examples of suspension without

pay have been used in recent years. I accept that they will not have a full list, but the Commissioner and other officers I am sure must have some examples which they could provide to members to assist us in that debate. As I said, the last issue is this area of tap on the shoulder, anointment from on high, or, as the Act says, 'temporary promotional reassignment'.

The current Act allows a Chief Executive Officer to anoint somebody, a favoured person, to a promotional position for up to three years without having to go through any normal panel or merit selection process. This Bill seeks to extend it even further so that in certain circumstances this anointment can almost be a lifetime anointment. The Chief Executive Officer could anoint somebody for three years and then, if the Commissioner for Public Employment agrees with the Chief Executive Officer, the Commissioner can extend that tap on the shoulder for whatever period the Commissioner for Public Employment agrees to.

The Public Service Association has proposed that. Even within TAFE at the moment there are certain persons who have been appointed or tapped on the shoulder in the past two years and given significant promotions without going to any form of merit based selection process. Certainly, within the Education Department in recent years, as I have indicated, a number of members of the department who were at the time members of the Director-General's barbecue set were appointed to senior positions by tap on the shoulder appointments, for up to two or three years. Others with certain political inclinations and other inclinations within the Education Department were in a favoured group, and still are, and were appointed, through the tap on the shoulder method, to senior positions within the Education Department without going through selection panel processes at all.

This Bill seeks to extend that system potentially even further, so that it can almost be unlimited. My experience of the Education Department, my knowledge of the Department of TAFE at the moment and my understanding of some of the other areas indicates that there is nothing more likely to divide a Public Service or a departmental staff than the abuse of this particular provision by senior officers within a department. The notion that favoured persons, whether in a barbecue set, whether they play tennis with the Minister or the Chief Executive Officer or whether they went to the same school, or for whatever reason, perhaps having the same political views, it does not matter—

The Hon. R.R. Roberts: I hope they don't bring that system into the Liberal Party or you will never get a promotion.

The Hon. R.I. LUCAS: At the moment you would not get very far if you are a member of the Liberal Party, as the Hon. Ron Roberts quite rightly points out. Quite honestly and frankly the honourable member announces that if you are a member of the Liberal Party you are not likely to get very far in the Public Service at the moment. It is to be deplored that that is the way the system operates at the moment. The honourable member is right; that is the way it operates at the moment. There is nothing more likely to tear your Public Service apart and to destroy the morale of workers in the Public Service than having this sort of abuse going on year after year, where people are not being appointed through the selection panel process—and there are enough problems with that process—but are being tapped on the shoulder and appointed to significant promotional positions. They work their way through to the top because they happen to be a favoured son or daughter of the Chief Executive Officer or perhaps the Minister. We have had examples of this. We have seen the Minister of Education in his own office tapping an officer on the shoulder and appointing her to a senior position, within a school, admittedly, under the Education Act, as a principal, without going through selection panel process. There have been a good number of other appointments from his office going into central office. As I said, nothing is more guaranteed to tear a staff apart than that sort of behaviour. So we intend to seek to amend this provision of the Act.

There are some arguments for temporary promotion and reassignment. We believe that, rather than allowing the Chief Executive Officer to do it for up to three years, perhaps we should restrict it for 12 months so there is 12 months when people could be appointed in an acting capacity. Perhaps the Commissioner for Public Employment could be given the responsibility to extend that in certain circumstances for another two years, but no more. The aggregate period of three years should be the cut off—split into one and two years. That is the current arrangement. However, at the end of the three years, that is it; people have to go back and, in those rare circumstances, they would have to return to their old job or subject themselves to a merit-based appointment under the selection panel process.

They are the major matters that I want to place on the public record. There are a number of minor matters that I will address in the Committee stage. I indicate the Liberal Party's support for the second reading of the Bill.

The Hon. R.R. ROBERTS secured the adjournment of the debate.

ADJOURNMENT

At 12.7 a.m. the Council adjourned until Wednesday 3 March at 2.15 p.m.