LEGISLATIVE COUNCIL

Thursday 22 April 1993

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

STATUTES AMENDMENT (FISHERIES) BILL

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

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

Motion carried.

DEVELOPMENT BILL

Adjourned debate on second reading.

(Continued from 21 April. Page 1971.)

The Hon. DIANA LAIDLAW: Last night I made a number of comments in relation to this Bill and I outlined in broad terms a number of my concerns about planning and development matters in general, and today I want to talk about some of the areas that are of principal concern for the Liberal Party, developers, the Conservation Council, lawyers and others in the community, including local government. I will not go through this Bill in detail at this stage because I believe that so many of the provisions are complicated and require detailed consideration during the Committee stages. That is when I will raise the questions and concerns that I have received from many people in relation to this major Bill.

First, I wish to address clause 3, which deals with the objects of this Bill. They are essentially restrictive in nature and negative in outlook, and that view has been presented to the Liberal Party by many people who have a direct and indirect interest in planning and development matters. It certainly is my view also. I think it is very important in this Bill, which is entitled the Development Bill, that we do seek somewhere in the objectives to say that we wish positively to encourage development.

This Bill does replace the Planning Act but, other than in respect to the title of this Bill, there is a notable absence of any positive statement that development should be encouraged, fostered, promoted or stimulated. The emphasis in this Bill, particularly in terms of its objectives, remains on planning processes and procedures. I am very keen to encourage development in this State, as are my colleagues and, I believe, the Government. But that development must embrace and not clash with economic, social and environmental goals, and there is nothing in the objectives that conveys that we in this State intend to encourage development but to do so according to some conditions. The objects of this Bill outline all the conditions but do not get to the nub of the matter, which is that we should be seeking to encourage considered development in this State.

There has been so much public antagonism to development because the Government has tolerated development that does clash and has clashed with community goals, and because the Government has tried to circumvent rules and regulations for development on its own land and has also sought to do so for a favoured few. I note also that there are some developers in our community who have contributed to the current mess about which they now complain because they have been abusing the rules and submitting ambit claims for development.

I cite as one example the shopping centre development on O'Connell Street, North Adelaide. The rules that everyone understood in respect of this development were very clear in relation to height, ratios and what would be tolerated in terms of the composition of this development, and the residents and the wider community were comfortable in the knowledge that there was some certainty about what was going to be developed on that site. The developer, and developers generally, should have also been comforted by the fact that the certainty that they are always calling for was provided for in terms of planning law along O'Connell Street.

But trouble erupted, and for good reason, because the developer put in an ambit claim and now complains that minority groups are opposed to what it is trying to do. I would argue very strongly that developers such as in this instance cannot have it both ways. They cannot call for greater certainty in planning law and then, when it suits them, break the rules. That is what has happened time and again in this State, and I think it is an unacceptable example by business people in terms of their respect for the community in which they would then seek to work, operate and profit.

I am very keen, as I indicated, to see some encouragement for development in this Bill and in the community in general, but it must be development that does not clash with economic, social and environmental goals. This Bill does address the economic, social and environmental goals in a number of respects, and I will come to those in a moment. But, I repeat, there is no positive statement in this Bill that the Government or the Parliament would seek to encourage development, notwithstanding the title of the Bill.

The Bill also aims to address the issue of certainty in planning by introducing the concept of a strategic plan which will guide the preparation of local development plans. This is a good concept. It is important however, that, if it is to work, every effort is made to ensure that there is active community participation at all stages, and it will work only if the people are involved from the start. Therefore, the Liberal Party will be moving an important amendment to clause 22 relating to the planning strategy. The Bill proposes that the planning strategy will essentially be a Government document prepared by the Government, for the Government, and then for the community at large. The Government also proposes that a report will be prepared annually for presentation to Parliament on the community consultation to be undertaken by the Government regarding the content implementation revision or alteration of the strategic plan.

The Liberal Party believes that the planning strategy must be, and must be seen to be by the community, the

property of the community and not essentially the Government's property. We are very keen to encourage a sense of community ownership in respect to the development of this strategic plan. Therefore, the Liberal Party believes that, in relation to any proposal to create or alter the planning strategy, there should be a clear set of guidelines on how the Government will undertake the public consultation in which it has suggested it is interested. If we are to succeed in our endeavours of bringing some certainty into planning in this State, I do not think the community will tolerate vague outlines and suggestions of community consultation as is proposed by the Government in this Bill.

I have an amendment on file, and I see that the Australian Democrats have a similar amendment, to encourage community consultation involving public advertisements advising that the draft plan is available for inspection. I would note that such an inspection would be without charge. Through this public advertisement process my amendment would invite representations from the community, essentially in writing, on any concerns about the draft plan. My amendments also provide that there will be public meetings so that people are given an opportunity to present, in verbal form, their concerns.

In the other place we moved the same amendment, but at that time we specified that the period that would be allowed for this process of community consultation would be not less than three months from the date of the publication of the advertisement. The amendment that I have on file confines this period of public consultation to two months, and we have done so on the basis of the Minister's concern expressed in the other place that we would be once again lengthening this whole planning process, and we do not want to do that unduly. However, we believe that in terms of planning and certainty, and winning community confidence, that the community must be involved at this early stage.

We also propose consultation through a series of public meetings to ensure that, as far as reasonably practicable, the representations from both the above initiatives are taken into account before the planning strategy is created or altered. When this matter was debated in the other place the Minister made the reasonable observation that we were seeking a process that applied irrespective of whether the alterations were of a major or minor nature.

The amendment that I have on file seeks to accommodate this concern. We will move an amendment to clause 22(3b) that the public consultation process:

> ...does not apply in relation to a proposal to alter the planning strategy if the appropriate Minister has, by notice published in the *Gazette,* certified that, in his or her opinion—
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> (a) the alteration is of a minor nature and, in the circumstances, does not warrant public consultation; or
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> (b) it is necessary for the proper operation or application of the planning strategy that the alteration take effect without delay.

The second part of the public consultation amendment that I will move is important because it requires the Minister to identify what he or she believes to be an alteration to the plan that is of a minor nature, and when it is published in the *Gazette* those who wish to take issue with the notice from the Minister can then do so. We do not believe that simply the Minister in isolation and without public advice should make such a decision. So, I believe that the two part amendment on public consultation is an important one to be moved by the Liberal Party and one that I hope will win majority support in this place, because it seeks to win public confidence for planning and development matters in this State and to involve the public from the very start in the planning strategy process. That, in turn, is important because this planning strategy is to be a key to the detailed local development plans.

In respect of clause 22, I note that the Australian Democrats also have amendments on file about the factors that should be taken into account in determining matters that will be defined as ecologically sustainable development. The Liberal Party is considering this matter, although it notes that under clause 23 there is reference to ecologically sustainable development as one of the objectives or principles that must be taken into account when the development plan is being considered.

I am concerned, as are the Australian Democrats, about the linkage between the strategic plan and the local development plans. In our view, this linkage is lax at present. I have received some legal advice on this matter, and I am told that any insistence within the Bill that the development plan must incorporate the strategic plan would lead to litigation and could frustrate the planning process and undermine much of the good work that is being sought through this Bill. My colleagues and I are still looking at this matter, because I believe it is a flaw in the Bill at present. However, at the same time, I do not want to see the Liberal Party giving reason for unnecessary litigation that is not in anyone's interests if that litigation is just based on matters of a very technical nature.

We are also conscious that, in terms of this linkage between the strategic plan and the local development plan, there could be problems when councils decide that, for a variety of reasons, they do not want to incorporate strategic plan objectives within their local plan. We can all see that happening for any number of reasons, particularly if the community, including local Government, is not involved in the early stages of the preparation of the strategic plan.

It is this linkage between the strategic plan and the local development plan that has prompted the Liberal Party to suggest a number of amendments about regional planning matters. I note that in clause 22 there is a reference in subsection (3) as follows:

> The planning strategy may incorporate documents, papers, plans, policy statements, proposals and other material designed to facilitate strategic planning and coordinated action on a Statewide, regional or local level.

So it is envisaged in the plan that there will be matters of a strategic nature on a regional level. Yet, our planning process in this State is at a local level, and this Bill proposes there will be more power vested in the local level, and at a State or ministerial level. It seems to us that there is a deficiency in our planning processes and in this Bill if we do not address regional planning matters at this time.

It is important in many circumstances to look at planning on a regional basis. I know that in the Barossa

area, with which I am familiar, there has been a great deal of tension and uncertainty in the community because of a spate of tourism developments proposed a number of years ago. There are many small councils—I think four or five—either in the Barossa Valley region or bordering it, that have now been meeting for a couple of years to look at planning within this critical area on a regional basis. So, we can see in this instance that councils themselves are beginning to see the value of addressing planning matters on a regional basis, even if at this stage it is merely on the basis of discussion. However, it is working well in the Barossa and I think that we should be encouraging that process, both in the country and the regional area and where those areas comprise both big and small councils in terms of area.

I mentioned the Barossa and tourism, but there are a lot of other advantages that I can nominate where regional planning will be important. Transport is one area. We also know that as a result of discussions about how we are going to accommodate residents in the southern suburbs who need to travel to and from work and for other purposes to the city that there are terrible traffic congestions and other hassles that are not being addressed on a regional basis because inner metropolitan councils are not involved in the process. I think it is important that we try to encourage such discussion at this stage. Hopefully with the amendments that the Opposition has on file there will be an opportunity for planning decisions to be made on a regional basis.

This issue of traffic in residential streets in the metropolitan area is one of the outcomes of all the traffic coming from the outer metropolitan areas. As to congestion in residential streets, which is leading to much antagonism about whether or not we have 40 km/h in inner metropolitan streets, or whether we have speed humps or roundabouts, all these matters are contentious and they will become more so until we address on a regional basis traffic problems in our community. I believe that there is also a need to discuss regional planning and to make provision for it when we are looking at urban and commercial consolidation matters. I am particularly anxious to see urban and commercial consolidation along our public transport corridors, but that will be difficult to achieve with the piecemeal approach which we have to planning in this State at present and which we will be encouraging in the future as a consequence of the Bill in its current form.

We have a situation in the Bill where, at a planning level, the State Government, hopefully with community consultation, will be developing this strategy, which may talk about urban consolidation and public transport corridors. It may talk about improved transport, including road links from outer metropolitan areas into the city, but until we have a means by which we can have discussion and implementation of such strategies on a regional basis the proposals in the strategic plan will come to nought. I acknowledge that there is some concern among local councils about regional planning at this stage. Some of them have suggested to me that it would actually be taking away from councils their prerogative to address planning matters. I do not see it that way. In fact, I see that our amendments will enhance the role of local government to make decisions that affect their area and, very much as we have been discussing in relation to this Bill, development cannot proceed in isolation and nor can local government decision making proceed in isolation and irrespective of the ramifications of those decisions on neighbouring councils.

The Minister has power in this Bill, as the Minister has at present, to intervene in planning matters where they cross local government boundaries. We saw an example of that in the Craigburn Farm situation where, because there were neighbouring councils involved, the Minister took control of the matter and took it out of the hands of local government.

The Hon. M.J. Elliott interjecting:

The Hon. DIANA LAIDLAW: That is an appropriate interjection from the Hon. Mr Elliott, because there was not even any discussion, information, consultation or advice given to the respective councils that the Minister had taken this matter out of council's hands, and it has developed into an ugly situation. It is one that I believe we would want to avoid in the future. Statements by the Minister in another place that Liberal Party concerns about regional planning are inappropriate because, in this instance he has the power to intervene, give me no confidence that that is the right approach to address the very sensitive issues that would be involved in regional planning. I am keen to see local government retain responsibility for these matters. I believe they should be looking at some provision for regional planning along the lines that the Liberal Party will be advocating by way of various amendments to the Bill.

Another area that I wish to discuss briefly is the composition of the Development Assessment Commission as outlined in section 10. The Liberal Party is proposing a number of amendments to the composition of this committee including a person with practical knowledge of, or experience in, environmental conservation, chosen from a panel of three such persons submitted to the Minister by the Conservation Council of South Australia Incorporated, a person chosen from a panel of three persons submitted to the Minister by the South Australian Farmers Federation Incorporated and a person chosen from a panel of three persons submitted at the invitation of the Minister by an organisation that is, in the opinion of the Minister, concerned with the provision of facilities for the benefit of the community. Our last proposed change to the composition of the commission is a person with practical knowledge of, and experience in, urban and regional planning.

I note that the Australian Democrats have amendments on file and that they propose that the Conservation Council and SACOSS should both be provided with an opportunity to nominate to the Minister a panel of three persons, with the Minister then selecting one person. There will be some discussion about this matter during the Committee stages, but the one area on which we both seem to agree at this time is that the Conservation Council should be provided with an opportunity to submit the names of three persons for consideration for membership on this board.

I am also concerned about the number of provisions in this Bill that one could broadly define as ministerial discretions. I am also concerned about a number of proposals in this Bill where, by regulation, the Government can exempt various developments from abiding by the provisions in this Development Bill. It has

been put to me that the regulations for exemption in this respect are so broad that it is quite possible for the Government to be exempting the Economic Development Board from having to comply with any of the provisions in this Bill if it is promoting development in any form in this State.

The Hon. M.J. Elliott interjecting:

The Hon. DIANA LAIDLAW: That is right, it does, but I am just saying that in this Bill examples such as that can be encouraged. This is not confined solely to the Economic Development Board but can involve any other examples, and the Government, almost at whim and without check, can exempt such organisations. I think that is intolerable, because it would be an endorsement by this place that there would be one law for some and one for others. That has essentially been the basic problem with planning law and its implementation in this State over the past six years, particularly in respect of tourism development. This issue of ministerial discretion must be looked at very closely in respect of this Bill. There have been abuses in the past, and we must ensure that we do not provide wide discretions for this Minister, or indeed any future Minister, to abuse them.

Equally I am concerned about the provisions in relation to the environmental impact statement, and the subject of ministerial discretion is apt here. Clause 46 deals with the environmental impact statements, and I note the following in subclause (2) in respect of major projects:

> Where the Minister is of the opinion that a proposed development or project is of major social, economic or environmental importance—
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> (a) the Minister may, in consultation with the proponent, have prepared, or arranged for the preparation of, an environmental impact statement in relation to the proposed development or project; or
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> (b) the Minister may require the proponent to prepare an environmental impact statement in relation to the proposed development or project in accordance with guidelines determined by the Minister.

There must be a great deal more certainty in this area. We have seen examples in the past, and the Hon. Trevor Griffin was one who was concerned about the marina development at Marino Rocks. I suspect that the former member for Bright, Derek Robertson, lost his seat because the Government would not insist that an EIS be prepared for that development at Marino Rocks. The community was so angry that the Government would proceed with this major project, which had major social, economic and environmental ramifications, without its being subjected to an EIS.

It is that sort of example of ministerial discretion that has brought our planning system in this State into disrepute and has frustrated everybody in the community: developers, local residents and other third parties. If the Government is to have any credibility in saying that this Bill aims to increase certainty for all involved in the community, we must look at these issues of ministerial discretion. We must also look at clause 49 in respect of Crown developments. I have from time to time, in my 10 years in this place, expressed my anger that the Government has exempted itself from planning provisions that everybody else in the community must follow.

The tram barn instance, although it was probably worked out under the Heritage Act, was the most recent example. The Government decided that the tram barn at Hackney did not fit into its current plans and, although it was on the State and national heritage lists, it was going to be pulled down. I received many calls from many people who have heritage properties not only within the metropolitan area but also in the country, including Seppeltsfield, who were absolutely livid that the Government should be intruding on their rights, as they saw it, to develop their property as they wished. Although the Government told them that they could not do what they wanted to do with their property, when it came to a Government property the Government—although the Minister had a vested interest, or at least an interest, in this—would decide that that property could be delisted from the register and be demolished. People are just trying to make alterations to their—

The Hon. Anne Levy: Are you suggesting that the Minister has a personal interest?

The Hon. DIANA LAIDLAW: No, I did not say a vested interest—an interest. She had an interest because she was representing the Crown and this was a Crown property.

The Hon. Anne Levy: That is a bit different from a personal interest.

The Hon. DIANA LAIDLAW: Yes. I said a vested—

The Hon. K.T. Griffin: Not like Mr Mayes.

The Hon. DIANA LAIDLAW: Well, Mr Mayes is another matter. When I said a vested interest I meant from a Government perspective, not from a personal perspective, and I thank the Minister for interjecting and clarifying that. I was talking about a Minister and I am talking about Crown development.

The Hon. Anne Levy: You were comparing it to private individuals who were told they could or could not do something, where they obviously had a personal financial interest—

The Hon. DIANA LAIDLAW: Yes.

The Hon. Anne Levy:—and you are comparing that to Government, where the Minister may have an interest but it is nothing like the interest; it is not a personal interest, not a private interest and there is no financial ramification. It is a different situation.

The Hon. DIANA LAIDLAW: It is a different situation but, nevertheless, it can be argued, and I will argue, that the Minister has an interest because as a representative of the Crown he or she is seeking to delist, in that instance the tram barn, a Crown property, and you would not find the Minister so readily prepared as others—and people have been involved in such matters in the past—to sign such exemptions or to delete people from a list if that property was private. It is this situation that what is good for the Government is different that is not acceptable to the private community. These two laws apply to this whole situation, whether it be in heritage or in planning in general, and this has frustrated people generally with the planning process.

The Hon. Anne Levy: But you agree it is a different situation.

The Hon. DIANA LAIDLAW: I agreed some time ago but, nevertheless, there is an interest. I believe that the Government itself has brought much of the anger and

frustration in the community about planning, development and heritage matters upon its own shoulders because of its own behaviour. I suspect that is one of the issues that is so disappointing in debating this Bill: that there remains no acknowledgment from the Government in any form or by any Minister of their part in bringing our planning system into disrepute in this State and frustrating many developments that could have been off the ground and up and running for the benefit of the State if the Government had not handled them in such a ham-fisted manner.

The Hon. M.J. Elliott: And arrogant.

The Hon. DIANA LAIDLAW: And arrogant manner; that is sound. In terms of Crown development I am aware that some people associated with safety and fire matters are concerned that Government buildings will be potentially exempted from many of the provisions they would see as being necessary for the occupational health and safety of the people who occupy those buildings. I would like to address that matter further during the Committee stage.

The Hon. M.J. Elliott: What about the Waite development?

The Hon. DIANA LAIDLAW: Yes, the Waite development is another classic example of where the Government has been able to get away with doing something that nobody else would have been able to get away with in the circumstances if it was not Crown property. So, the Liberal Party will be addressing those general issues by way of amendment, and I suspect, looking at the number of amendments that we have on file and those by the Minister and the Democrats, that it will be a long and detailed but, hopefully, rewarding process when we go through the Committee stage of the Bill.

The Hon. BERNICE PFITZNER: This is indeed a very large and complex Bill. As with all planning matters, it is a very difficult area to grasp and time must be taken to digest not only the theory that is proclaimed in the Development Bill but also the practicalities and implications of it. This Bill originated two years ago, when the planning review looked into all areas of development and, quite rightly, decided that most of the State's planning should be encompassed by a very comprehensive Bill, which is now before us. The Bill's objective is to establish principles and planning of development; to establish a system of strategic planning governing Government developments; and to provide for the creation of development plans which will enhance proper conservation, facilitate sustained development and advance social and economic interests and goals of the community.

The Bill further states that its object is to establish and enforce cost-effective technical requirements compatible with the public interest and, further, to provide for appropriate public participation in the planning process and the assessment of development proposals; to enhance the amenity of buildings and provide for the safety and health of people who use buildings; and to facilitate the adoption and efficient application of national building standards and national uniform accreditation of building products, etc. They are most desirable objectives to try to follow.

Further, the Minister in the other place has also enunciated the three broad principles that would underpin this Bill. The first is that the legislation which sets the framework for the physical development of metropolitan Adelaide and the rest of the State must be based on strategic planning for the future and focus on achieving results; it must relate to the overall economic, social and environmental strategies for the State as a whole. Secondly, it must resolve any conflicts that arise quickly and with certainty and, thirdly, the systems and processes it establishes to carry out its objects must be as simple as possible, visible and fair.

I also agree with the theory of that, but so many times the theories or motherhood statements are not implemented in the practical sense. For example, only recently the Government sought, over Christmas last year, to change some planning regulations. It revoked the fifth schedule, the implication being that the State's advisory activities will cease with respect to applications for consent to the developments in the areas listed in the fifth schedule. Another planning regulation it sought to change by the gazettal around Christmas 1992 is a variation of the seventh schedule which will remove minor development applications and some major development applications from the State authorisation to local councils in the areas listed in the seventh schedule.

My concern about the removal of these planning regulations without this Development Bill in place is that it appears to be illogical and, in a way, irresponsible. The question is not whether or not there should be planning and development in this State but the type of planning that we would want. The planning has to follow certain clear guidelines and principles which are given in the strategy or planning review, but on many occasions these principles are not followed at local council level.

In many respects the proposed legislation is considered nothing new and, if anything, it might be considered worse than the current legislation. As my colleague the Hon. Ms Laidlaw says, there is certainly a lack of certainty, and this very concern is why we are looking into this new Bill. The developers need certainty and guidelines so that when they invest their millions of dollars they can be sure of an outcome that will follow through and be established. When the conservationists look at legislation they want certainty as to the areas that they value most, the areas that are most unique, the areas that have beautiful amenities such as the hills face and the Adelaide Hills which should and will be preserved for many more generations to come.

There is no certainty in this legislation, and the problem with providing that certainty is that we also would like to provide flexibility. I feel that we have not done a sufficient amount of thinking and work to achieve the correct balance between the two. The lack of certainty is caused by the deletion of permitted and prohibited categories; by the retention of the status of development plans as advisory only; by the absence of criteria for assessing non-conforming uses; and by the lack of defined processes for establishing when and where environmental impact statements are required, and what their scope should be. The issue of uncertainty has not been addressed during discussions of this legislation over the whole of the two years, and it is a great disappointment to the developers and conservationists

that the focus and nucleus of development has not been fully stated or substantiated.

This legislation has no binding arrangements attached to the strategy plan. The argument is that this advisory status would provide for flexibility and therefore it has not been written into the legislation. There will be no legal obligations on the Government to adhere to the provisions of the plan or to any public consultation processes. Changes can be made to the plan within a very short period. The strategy plan also will undermine current development processes. Development plans will have to conform to policies in the strategy plan that are formulated sometimes by fast track methods which perhaps become undemocratic and can create further uncertainties. The gazetting of changes to the fifth and seventh schedule last Christmas and two years ago is, in my opinion, a method of an undemocratic process, as this particular Bill has not yet been debated and yet we change the regulations and the schedules. My understanding is that, at present, this change of the regulations and the schedule is causing local government considerable problems, as I understand there has been a flood of planning proposals, especially for the area of the River Murray fringe zone and the River Murray flood zone. However, we have now given the council that headache and responsibility.

There also has been no recognition for the sometimes poor performance of some councils. Although it is not deliberate, many councils, in particular the small councils, do not have sufficient planning expertise and funds to go into these very technical and professionally academic discussions. The council staff do not have the skills to handle those matters. Further, the deletion of the prohibited categories present some difficulty, and might present an open invitation for development of all kinds into sensitive areas. The EIS processes are, to my point of view, inadequate. The proposed Bill fails to meet the major concerns with the present EIS processes in that they are very arbitrary and unsatisfactory. The Bill should specify what types of proposals require an EIS.

Further, the new executive powers given to the executive arm of Government to exempt certain classes of development also cause me great concern. These powers will create further uncertainties in the system. The third party appeal rights appear to be diminished. Many third party appeal rights have been or will be removed to facilitate the fast tracking of development. Public notifications may be inadequate. Public notification processes about major policy changes and planning proposals are still aimed at fast tracking and I feel might not inform the public in general.

As I mentioned, one of the main reasons for the planning review was to establish greater certainty into the planning system. With more discretionary type planning this might be unlikely to happen. A more suitable blend of discretionary and regulatory planning is required, and looking into this particular Bill causes me great concern as to whether the theory, the principles, the aims and objectives can be met in a practical sense. I know I have been rather negative in identifying perhaps all the deficiencies in this Bill, but I do this because South Australia is a very unique State. Much of its tourist attraction is encouraged because of the environment of this State. I was born in Singapore where development is intensive and the economic requirements are great, and are its priority. The ecology, and its sustainability, is a lower priority. I feel Singapore has lost a lot of its flavour, its taste and uniqueness.

At present, they are trying to redress this problem by building little China towns, Indian and Malay villages and so on. We now have an opportunity to look at Adelaide and South Australia and make sure that we do not lose our uniqueness. Living in the hills face zone, I have noticed that it is a unique place in that from an international airport you can drive for 15 or 20 minutes into a rural area of such beauty as the Adelaide Hills. Is this development plan designed to keep, encourage and promote that beauty? When our founder, Colonel Light, came to Adelaide, he had the vision to establish the parklands which are now in place and which cannot be developed. We should think of our second generation parklands and ask whether our Development Bill is sufficiently strong to protect this area.

I could go on and on about development. As I have said, we need development but we need it to be controlled and we need to retain the uniqueness of this State. I would like to indicate my support of a document containing seven points which the Conservation Council has suggested regarding the practicality and implementation of the Development Bill, as follows:

1. Require development to be ecologically sustainable.

Nowadays in legislation we just use the word 'sustainable' but I think we need to add the words 'ecologically' and 'economically'. In fact, I believe that those two terms are interrelated because, if we look only at the economics of it, that will not be sustained if the ecology of it is not supported as well. As we know, the United Nations Conference on Environment and Development held in Brazil last year recognised that environmental sustainability must be a part of all future development planning. Many of us feel that when we talk about ecology of the environment we are against development of any sort. That is not so. Development, which means economic development, and ecologically sustainable development must, and I am sure can, go hand in hand, and I hope that this Development Bill will ensure that this happens. The document continues:

The new development planning legislation is the State's first chance to put principles of ecologically sustainable development into practice by requiring in the legislation that: development plans for local areas include principles and objectives of ecologically sustainable development; and, in considering all planning applications, development authorities must [and should] evaluate them against a check-list of environmental impacts.

2. Ensure public ownership of decisions.

Credible and equitable representation of the public on key decision making and advisory bodies is essential, and we should be open and accountable to all those decisions. The Conservation Council suggests:

The new legislation must:

Ensure wider community representation on the proposed Development Advisory Committee.

It is only in that way that we can prevent conflict between the community, conservation associations and developments and reach a compromise that is agreeable to all parts of the community. It continues:

Set down a clear requirement of representation of each of local government, development industry, environment

conservation, community services and development planning interests for the proposed Development Assessment Authority and Appeal Commissioners, require meetings/hearings to be publicly advertised, and open to the public outside normal hours for the region (as for local councils at present).

3. Ensure public consultation on changes to the proposed planning strategy. This document will determine policy directions that local councils have to implement through their development plans, thus representing a major new influence on future development planning. In the interests of democracy and public acceptance of such a planning strategy, the new legislation must require public consultation and comment processes for any changes or revision of the strategy. Such public participation processes already exist for changes to the development plan.

4. Remove loopholes relating to particularly Crown development. The Government should be subject to the same development planning processes as everybody else (except in relation to essential services). The new legislation must, first, specify any exemptions from the normal planning application processes for essential services in the main body of the Act, not in regulations changeable at executive whim; and secondly, where Government development is exempt from normal planning processes provide that either House of Parliament has the power to disallow approval within a specified period.

5. Set down criteria for environmental impact statements being required. The current open ministerial discretion as to whether to require an environmental impact statement (EIS) for a project allows for unfair manipulation and has led to community opposition to at least one project simply because it was not being properly assessed. A Government report involving community and industry participation in 1986 recommended the inclusion of criteria in the Act, and this is the case outside South Australia. The new legislation [should and] must include specific criteria by which the Minister determines when an EIS is required.

6. Ensure predictability and certainty.

I have raised this point many times during this debate, but I feel that this point has not been addressed and that it is the main issue that should be addressed. The Conservation Council continues:

In the past, the Planning Act regulations were so bulky and convoluted it was almost impossible for the public to know what the law was. Frequent changes exacerbated this problem. It is essential that the new legislation include the majority of its provisions in the main body of the Act, ensuring that changes are less frequent and by a more formal democratic process.

The final point made by the Conservation Council, in suggesting how to help make this new legislation work, is:

7. Create advance community consultation processes. If communities are involved in discussions about possible building development before plans are submitted or any decision is made by any authority, the prospect of community support and success for the project are greater. The new legislation must set up new mechanisms to encourage such preliminary discussions and assist industry in going about them in the optimum manner.

I believe that none of these seven suggestions is unreasonable, but none of them have been met so far. So, although I support the second reading of this Bill, because it is a step towards simplifying the processes of getting a development through, I am also very concerned that this Bill might not be able, in a practical sense, to support the theory and the objectives for which it was introduced in the first place. I support the second reading.

The Hon. PETER DUNN: In supporting the Bill I will probably take a slightly different tack than some. To those of us living out in the country who take freedom for granted and value it very highly, this Bill is an anathema if looked at purely in that light. However, I do understand that if one lives in a gregarious situation, as occurs in the city, then one has to have some order. I presume that is why we have police forces and an institution like this to reign some order through the community. However, I find a Bill like this extremely restrictive, and it does get up my nose at times, even though I am on the Environment, Resources and Development Committee, which is reviewing many of the plans and strategies that come through this Parliament.

The Hon. T. G. Roberts interjecting:

The Hon. PETER DUNN: The Hon. Terry Roberts interjects and says 'sustainable'. That is the basis on which this is built. It is to be sustainable, whatever that means in a dynamic society where change is constant. How do members think we got to the stage we are at? The Bill refers to heritage items and being able to list items with heritage agreements. But how did we get those heritage items? I ask members to think about that. It was not generally through a great deal of planning, as we have seen. They are dotted all around the State.

The Hon. Anne Levy: With good taste, which does not seem to happen so often these days.

The Hon. PETER DUNN: The Minister says it is good taste. That is fine, but it has developed not through planning but more like Topsy, until a few years ago. It has just developed over the years. There have been some fine examples of heritage items and North Terrace is probably the principal example of it. It is something no-one would want to see denuded or made worse than it is today.

The Hon. Anne Levy: We can improve it.

The Hon. PETER DUNN: Well, the Minister says that it can be improved, but I do not know that being told by someone will improve anything. I notice that there is a plan to change the trees, and I agree with that because some of the trees are getting fairly old and they probably do need renewing. We also want to look at the man-made buildings and the ability to walk along the footpath. That is getting difficult. I agree with the Minister there. However, that is not so much planning as just renewing what is already there or changing it slightly.

So, I find the Bill rather difficult to handle. I like that freedom; I like to go to see the wide open spaces and have a look around. I do not like to be restricted by other people, particularly. I believe that that is what the Bill does. We will find a group of bureaucrats sitting in an office thinking up every conceivable method of controlling someone else. That is what it is all about. They will sit there and think up every scheme and then a local body or a local government authority will have to abide by those rules and regulations. There may be some people here who are feeling rather embarrassed about that. I am sorry, but that is a fact of life. We in this institution do it to other people. But we try to be fair

about it and I hope those people who will impose some of these controls, rules and regulations and this guidance that we want for the future will think about their children and what they want in the future. I am not sure that any one person on earth this day can guide us in the right direction. We have seen plenty of people try, but not many have been successful.

As a person who lives in the bush I find the Bill itself a bit difficult to accept. I have seen impositions, planning and environmental law applied to my farmer friends. I take the case of the Vegetation Clearance Act, and that has been accepted despite what a lot of people said and despite what happened. I think it is for the betterment of the State, because we were getting to a stage where the remnant vegetation in this State was becoming less and less. Fortunately I live in an area where there is a lot of remnant vegetation. Eyre Peninsula is covered in it despite all the things that are said about its being a drift and a drought-prone area. However, the problems that occurred on Eyre Peninsula were nothing to do with the farmers: they were a lot to do with the Federal and State Governments. They taxed the ears off the farmers so that they had to work hard, they had to put more stock on their places and put more crop in to pay the rents, rates and taxes in those areas. In fact, that was what caused the period in the late 1970s and early 1980s when we did see a problem developing.

The Hon. T.G. Roberts interjecting:

The Hon. PETER DUNN: No, tax concessions on clearance had absolutely nothing to do with it. The country was over-worked and we were the people who caused that problem, not the farmers themselves. I can see that that will occur again in the not too distant future when we get a year of lower rainfall, because they are under enormous difficulties now, not so much because of rents, rates and taxes—they have not changed, but they have learnt to accommodate them—but because of the high interest rates we have had and the enormous debts that they have. Members are asking me what this has to do with the Development Bill? But the next thing we will be doing is regulating those people because they will have to have farm plans that will have to be submitted to local Government or to the Minister—and the Bill refers to it. We will be telling them that they can have only so much stock or that they can put in only so much crop. If ever we were heading down the track of total revolt that is what will cause it in the long term.

The Hon. T.G. Roberts: The soil conservation boards do that.

The Hon. PETER DUNN: The soil conservation boards do not do that: they encourage people to adopt better methods. They do not impose a statutory requirement on those people. So, I think that that is probably the better way to go. I might add that the soil conservation boards have been some of the most successful things that have occurred in the rural communities in the past few years, because there is peer group pressure. If five farmers surrounding one farmer say, 'For heavens sake', fix up your drift, your fence,' or 'You have too many stock or too much disease,' they will do it because of peer group pressure.

The Bill has emerged from the city, and that is necessary. It is necessary for the good management of the State, but I do not know any matter dealt with by this Parliament that causes more stir, ruction and heartache than planning and development legislation. I refer to the Craigburn Farm problems that occurred when they should not have occurred because we had rules and had to stick to them; we were unable to bend around them sufficiently to accommodate most of the people concerned.

There is a necessity for development in this State and a necessity for keeping some of the development that has gone on in the past—not all of it, but some of it. Turning to the word 'sustainable', I would like someone to define its exact meaning in relation to sustainable development. Does it mean development that goes on for ever and ever, as is the position today, because it does not happen like that? The world is more dynamic than that. It is a terrible word and it is used by people in respect of sustainable farming and sustainable development. The word creates a dichotomy. To sustain something one does not develop it, one just leaves it as a constant. The word is a nonsense.

If they referred to 'viable', it would be all right because within that word one can vary, change and make things fit the day or place or make it acceptable to the majority of the people or its required use. I believe that 'sustainable' is just a nonsense word, and I see it used repeatedly in the Minister's second reading explanation. I hear it constantly about the outback areas in which I spend time, about the desert country.

Last Sunday I was in Marree, listening to Reg Sprigg, an eminent geologist who has a development in the Northern Flinders Ranges. Indeed, that development has just won a best tourism development award in Australia. Reg Sprigg is a man who has had a significant influence on South Australia during his lifetime. He said that deserts are probably the hardiest area in Australia. He pointed out that where he lives if one loses soil and vegetation the land does not recover; it takes years and years to recover, while out in the desert land can be a desert one day, it can rain the next and barren areas can totally recover.

He used the example of rabbit plagues in the late 60s and early 70s. We had the big flood of 1974-75 and most of the rabbits in the area were drowned or died of cold or disease. He referred to the trees and vegetation that recovered since that time being enormous, and this demonstrates that the desert really has a much greater possibility for recovery. It is not so fragile. Desert country is not sustained, if we want to use that silly word. The word does not fit its use.

I suspect that the Bill will impact on people who live in that area, for example, people who have been looking after desert on their stations and who have been eking out a living and living in conditions in which many of us would not want to live. I suspect that the Bill will ask them to put in plans on how they will run their farms, asking for plans for the future running of their stations and properties, but I do not think people can say, because the situation changes from day to day, week to week and month to month in line with weather and climate changes.

To say that we are going to put in a plan and run this and that, so many stock, or change stock, or a mix of stock and not allow cultivation and cropping because there is not enough rain, is impossible to stipulate. One

cannot do that successfully under such a regime. Certainly, the Pastoral Board surveys areas, looks at properties and might say, 'Things are not going too well this year, let us change it.' That is how it should be. Activity has to be viable and decisions have to be made on the spot without too much long-term planning, otherwise people will get into trouble, and there is nothing surer than that.

In the second reading speech in another place the Minister stated that one of the broad principles on which the Bill is founded is that it must resolve any conflicts which arise, quickly and with certainty. I certainly agree with that, because that has been one of the problems encountered in the past. The Act did not resolve matters quickly; they grew and grew and allowed more people to get involved. As a member of the Environment, Resources and Development committee I know that the longer one holds matters up the harder they are to resolve. I agree that there needs to be change in this aspect. The Minister went on to say that there will be consultation and collaboration with local government. I hope so. Local governments are developing a system of their own and are becoming an important part of our community. They always have been, but they are having thrust on them more and more responsibility.

The Bill does that, but I am not sure that some of our country councils have that capacity, without incurring great expense, and some do not have the ability to raise the necessary capital, so they will be left behind. Adelaide City Council was a totally different kettle of fish, although I note from the Bill that its activities are encompassed by the Bill just the same as everyone else. There will not be any change from that and the rules will apply to that council just as they apply to anyone else.

There will be a problem in some country councils, and I have seen it already where they are getting less and less rate revenue and finding it difficult to maintain some of the social responsibilities they are being asked to undertake. Planning is something that will not bring country councils more revenue. It will not help them with their revenue problems, but it is an imposition about which they feel a responsibility that they must carry out. Therefore, planning is something over and above their normal operations.

In the explanation of the Bill the Minister says that the environmental impact statement process requires specific guidelines. I would hope so. That process has been all over the place in the past. Such statements are extremely expensive to produce. Generally, they are undertaken by outside organisations and that gives statements an objectivity that is not often seen within Government departments. But there is a requirement for environmental impact statements, I have no doubt about that, and the MFP is a perfect example of that. The Minister states:

> The Government understands and accepts that all sections of the community, from the largest developer to the smallest home renovator, need a planning approval system which is simple to understand and use.

This disturbs me. The statement in itself is okay, but its implications are horrific. Will I have to get local government permission to paint the inside of my house? God forbid! Will I soon need permission to breathe? Will we get to that stage soon? Internal renovations in what is not a public building being controlled in that way is an absolute nonsense and, if we get to that stage, then the world has gone mad.

To offset that, the Bill talks about the Crown being bound, and I am happy about that, because it is essential. The Bill also introduces a concept of private certification, which adopts some elasticity that may be needed. Certain people will be certified to approve development or a part of a development if they have a particular skill and I think it is important that such people be used. I am a little worried that the Bill refers to farm buildings. I live in an area away from the road and I am not sure that I need to build buildings authorised by someone who lives in the city or who lays down a set of rules.

I will generally construct a building which is purpose built, whether it be high or low. I may store my header in it so it would need to be 15 or 20 feet high, or it may be a low, flat one in which I want to store superphosphate and on which I have a movable roof. If I am going to be told that I have to put olive green colourbond on it or bright red or silver, or whatever the colour, I will be a little bit hard to get on with. I can tell you that there are a lot of farmers who think the same. They build them for the practicality, not because they look pretty or may offend someone who is driving up the road. Maybe in the Adelaide Hills that can apply. If you in the city want that, then do it, but do not impose your will upon those people who live further out who are finding it difficult enough to exist today. They want something that works and is practical; they do not want it because it looks pretty and it is useless, and that is what worries me about some of the things that are provided in this Bill.

The Bill is split in parts, and it talks about the Development Policy Advisory Committee in lieu of the Advisory Committee on Planning (ACOP). I guess that is the Public Service: they have to change something about once a month. It is incredible. I suppose you have to keep them working and give them a job, but I cannot see the point in changing the name. However, there you have it; it just means that there will have to be new letterheads and a heap more cost. ACOP has been an important committee. I notice that this committee has a few other things to do, and I think that what the Minister is saying in the second reading speech is quite correct. I do not have any problems with it; I just have a problem with changing the name for the sake of doing so. Part 3 relates to the planning schemes and provision is made for the preparation of a Statewide planning strategy for the development of land. That refers to what I was talking about earlier.

Fancy somebody in the city telling the owner of Cordillo Downs, Mungerannie or Rose Hill what he is going to do and how he will run his land; it defies logic. I know what is intended, namely, the overall plan, but all that will do is cause something to be changed later, and I suspect that it will employ a few more people with a pen to write down what they think ought to be done about it. I really find it very difficult to understand why the Government would want a Statewide strategy for the development of land. It is difficult. If the Government is going to encompass native vegetation clearance, and so on, I guess we could put that in. It has proven to be all right, and there are no ructions in the camp but, if you

open it up again, you will have farmers getting stroppy and being hard to get on with. However, if you just let it lie where it is it will be all right. It is like kicking a dog that is asleep: it will get up and bite you if you do not watch out.

There are a number of ways in which the strategy of Statewide planning or development of land can be implemented. These are enumerated in a series of dot points that are not terribly easy to understand. I have not looked at it in any detail, but I presume it is a method of taking the medicine with a bit of sugar coating on it.

The Bill refers to the establishment of a development plan applicable to geographical areas of the State. I presume that is just getting a little more definition than we get in the Statewide plan. So, my comments remain the same. The development plan may list local heritage items. This will complement the State list to be established under the companion heritage legislation, and I guess I agree with that. I think there are places that we do need to look after and care for. Under this legislation we may have been able to care for what I thought was a very significant series of buildings which no longer exists and that is up on Lake Killalpaninna up on the Birdsville Track, where a Lutheran settlement went in the 1880s. There were some significant buildings there. I understand that those people ministered to about 600 Aboriginals at one time or another. The buildings were constructed not of brick or limestone but of mud and straw. Some had thatched roofs, and those buildings, which were in the base of the Cooper Creek, have totally disappeared, particularly since the 1974 flood.

I should have thought that buildings like that could be put on a list like this and some extra effort made to preserve them because they had an incredible history. These people came out from Germany on a boat, got off with their German wagons and headed up through the Flinders Ranges, stopping at Depot Springs—it is quite well recorded in the Parliament; there are some books about it. They went from a dry climate of probably zero degrees to a climate where it was quite commonly 40 plus degrees for weeks on end. The story is quite incredible. I know some descendants—they are very old now—who were born up in the area, and that is just one example. They are the sorts of things that I hope this Bill can pick up. However, we do not want every tin shed in the area put on the local heritage list.

I now refer to interim development control. We have just seen what has happened with interim effect with the Craigburn development and the problems that that has caused. The committee on which I sit made a recommendation that has been ignored. If the Minister ignores it, he does so at his own peril. I guess he has received advice from his department and his officers. I have heard that the officers were not too happy with our report and so have given the advice not to accept it. Well, they may do that, and that is their prerogative, and it is the Minister's right under the present Bill to ignore that. However, I warn the Minister that if he ignores what has been advised by a committee set up by the Parliament he does so at his own risk.

Quite often the collective wisdom of people within the Parliament is better than that of any one person, and we have looked at it from a broad section of the community. We do not all come from the one area. We do not all live in the city. We do not all live in the country. We have tried to come to a conclusion. I must say that it was a unanimous conclusion that we came down with from all walks of the Parliament: from the Labor Party, the Liberal Party and the Australian Democrats. I hope that the Minister looks at it a little more carefully; otherwise, he might find that the committee will bite him later on and, when it does, it will be rather awkward, because we will probably pick our target when we do. Let me say that it was set up by the Parliament to assist the Minister and not to be highjacked by a group of bureaucrats.

The Planning Act provides that agreements can be entered into by either the relevant council or the Minister. However, the term 'development' does not appear in these subclauses. In other words, councils will have to put a plan forward for their area. I guess there is some good reason for that, because we have seen in the past, particularly in country towns, very poor development plans. We have seen right in the middle of some towns quite heavy industrial development, car bodies, machinery, and so on, left there. But of recent years some more development has been taken on by local government, and we have seen light industrial areas develop on the outskirts of towns.

I think that is right and proper, because you can provide the facilities, the power and the necessities for that. If you travelled to England you would realise that you do not see any of that in the little country towns, of which they have many. You do not see these light industrial areas or development areas stuck in the middle of a town. That is one good thing that can come of this Bill: that that, perhaps, can be strengthened. It will take time, because the people who now own the land in the town bought it with the full intention of using it for such, and you will need to wait until it perhaps changes.

But I guess there are regulations in this Bill that will allow them to move in and say 'Look, in the future, you cannot have a machinery sales area or a car body stored there; it will need to be used for housing or some light commercial or shops, or whatever.' The Bill also refers to mining. If I go into the areas in which I have travelled, such as Roxby Downs but, in particular, places such as Coober Pedy and Mintabie, there is a need for some development. It is a very interesting area, and here is the case of 'sustainable'.

People go to Coober Pedy because it looks like a moonscape when you fly into it. It is a most beautiful area. You have the Stuart Range running up and down, and the breakaway country, which many people have seen from photographs, is beautiful. On the south-west side of that you have Coober Pedy with its many mounds of soil, and it is a very attractive and different area. It really does look like a moonscape.

Someone will say 'Now, should we put it into a heritage agreement or clear it up, level it off and fill in all the holes?' The first thing that would be said is 'No, let us leave it as it is because it is a very attractive area.' But you cannot say that it is a sustainable area: it is different. However, when you go to Mintabie, where mining has been done differently, using bulldozers, the miners have aggravated some people who say that they have changed the landscape. I happen to agree with them. I think there is a necessity for some planning, where those areas ought to be filled in and levelled off a

bit better than they are at the moment, because that is not an attractive area to fly into or to go into by land.

It is not an interesting area as opposed to the Coober Pedy area or, for that matter, Andamooka. So, I guess mining has some reason for planning. Roxby Downs is a totally different thing: you would not know that there is a mine there, because most of it is underground. Once the mineral is taken from the ore body it is returned back underground, so there is very little visual impairment. Mining, I guess, will look sideways at this development.

I have covered a few things, although I have not gone into detail. This is really a Committee Bill, and quite a number of amendments will be put up. However, I point out a few of those things where I see there is a necessity for the Bill. That is why I am supporting it, although I can see some improbabilities developing from it. There always will be when someone outside imposes his will on someone inside or *vice versa.* I do not think the Bill has gone too far. I think it is workable. I hope so for the benefit of this Parliament, because, as I said, we do spend a lot of time arguing about development matters. That being the case, I support the Bill.

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): In closing the second reading debate I would like to thank members for the attention they are giving this legislation. A number of matters have been raised which will be dealt with during the Committee stage. The Development Bill and its companions, the Statutes Repeal and Amendment (Development) Bill and the Environment, Resources and Development Court Bill constitute a reform package that signals the Government's determination to establish a planning system that is capable of actively supporting imaginative value added development.

Work on the planning review, the planning strategy and the Development Bill forms part of a broader reform thrust involving other related legislative reforms. These include the planned Environment Protection Bill and the revamped Heritage and Coast Protection Bills. The Development Bill puts forward a new integrated planning and development assessment system for South Australia: a system that is essentially fair, accessible and consistent. This important legislation sets out to replace a host of fragmented controls contained in a variety of other Acts.

By removing the more cumbersome legislative, procedural and administrative hurdles to sensible development, the Bill will create a system that is clearer, simpler and less complex—a system that will progressively bring greater certainty to all. Since August 1992 the consultation program has included the distribution of the November 1992 draft of the Development Bill to all the relevant industry associations, professional institutes such as the Australian Institute of Building Surveyors and the Royal Australian Planning Institute, and other interested groups such as the Conservation Council.

Furthermore, the Local Government Association and all councils in the State were sent copies, and a public notice advertising the Bills was published. Comments were requested by the end of January 1993. The distribution of the December 1992 draft of the development regulations was again made to all the above groups, including the Local Government Association and all councils in the State. Comments on the regulations were requested to be made by 5 March this year. Following this wide distribution of the draft Bills and regulations, a discussion and oral submission program was undertaken.

This included meetings with many regional organisations of councils throughout the State. A number of meetings were also held with representatives of the Local Government Association, the Conservation Council, the development industry, professional building surveyors and planners. The forwarding of a Development Bill kit, which included the amended Bills and the second reading explanation for each Bill, was sent to every council in the State in early March 1993 together with sufficient newsletters for each elected member of the councils. The kits were also sent to all the other groups that I mentioned earlier. So, the knowledge of this package of Bills has been very extensive.

The Bill establishes two sources of planning policy: the strategy plan and the development plans. While the Development Bill recognises the need for a planning strategy for the State, the Bill makes it clear that the strategy itself is not a statutory document. Rather, it is an expression of Government policy. The strategy does not affect rights or liabilities and is not to be taken into account when normal applications are being assessed. It cannot be used in a court to challenge the policies in a development plan amendment or a decision on a development application. Development plans, by contrast, are statutory documents which are used in assessing development applications and are the basis for court decisions. Although it is not appropriate for the Bill to set out the steps by which a Government's policy document is to be prepared the Bill does recognise that the community will be involved in the preparation and amendment of the strategy.

The Bill also requires the appropriate Minister, for example the Premier, to report to Parliament on the implementation of the planning strategy, amendments to the strategy and the nature of community consultation. More detailed procedures for amending the planning strategy should not be included in the Bill as this would be inappropriate as the level of consultation must be commensurate with the nature of the amendment. More detailed procedures would also create potential for litigation on the process for amendment, thus discouraging Governments from setting out their development policies in the strategy and imposing what could be inappropriate time amendments on public expression of Government policy, and indeed, even frustrate that process. The Development Bill specifically states that ecologically sustainable development principles can be included in development plans. The objects of the Development Bill refer to matters associated with ecologically sustainable development. The Bill indicates that development plans aim to facilitate sustainable development and to protect the environment. There is also a section in the planning strategy relating to ecologically sustainable development. It is anticipated that ESD issues will be included in the planning strategy which will be authorised by the Government. It has been suggested that further references to ESD principles should be included in the Bill, but it is not appropriate to

include these further references to ESD principles in the Bill itself, because all of the development assessment principles should be located in the one place and that is in the development plans. The Bill will become unbalanced if detailed reference to ESD principles is placed in the Bill without similar references to social and economic issues. The Bill is intended to be policy neutral. It establishes a process for making policy, and the policy is to be contained within the planning strategy and the development plans.

The Development Bill establishes the Development Assessment Commission as the State level development control authority. The Bill proposes that the commission will have five members: a Chair and Deputy Chair with planning, building or environmental background; a person with local government expertise nominated by the Local Government Association; a person with expertise from the development side; and a person with expertise in community services or environmental issues. It has been suggested by some, Mr President, that the membership of the commission should be broadened to include a representative of the Conservation Council and perhaps other representatives from associations such as SACOSS, the Farmers Federation and the Royal Australian Planning Institute, but the membership criteria are exactly the same as for the current South Australian Planning Commission. The current commission has worked well for the past 10 years, and given that the new commission will have exactly the same functions as the current commission there is no demonstrated need for change. Membership is based on expertise. It is not intended that the commission be a representative body. Hence, it is not appropriate for industry or community groups to nominate members. However, given the interest of these groups in the commission the Bill does provide that appointments are made by the Governor, only after the Minister has made a public call for expressions of interest.

Occasionally, the current Planning Commission deals with applications beyond the expertise of its members. For regularly occurring matters, such as mining, waste disposal and aquiculture, the current commission has established specialist subcommittees, and the Bill retains this ability for the new commission. In addition, the commission has access to specialist advice from Government agencies and the Bill provides the commission with access to such advisers.

I now comment on inspections during construction. The Development Bill does provide councils with the ability with carrying out as many inspections as they deem necessary during construction. There will be three broad options available to councils. First, councils can decide to inspect buildings at the expense of the ratepayers, as is the current situation. However, the liability will be limited to the council's own negligent action, and so the risk will be less. Secondly, councils can offer a service to the proposed building owner at a fee, and some councils are proposing to offer this service to both owners and lending institutions. Thirdly, councils can decide not to inspect, but instead to inform the building owners that they should arrange for inspections to be carried out by a qualified person, and building owners may decide to rely on any inspections carried out by the lending institutions.

The regulations enable a council to require at each mandatory notification stage, and at the end of the job, the licensed builder who carried out the work to furnish a written statement that the building work has been carried out in accordance with the approval issue, and it would be a very serious offence for a builder to make a false statement. The Bill requires that building plans and specifications and so on are assessed by either a council or a private certifier. To agree to the call for mandatory inspections would water down the important principle of the designer and builder accepting responsibility for their actions, and could expose the inspecting agency to significant liability risk. The existing safeguards at the plan's assessment stage and during construction are considered to provide a safe outcome to building work.

Mr President, the Bill improves the environmental impact statement procedures without reducing the extent of community comment on environmental impact statements. The main changes which are proposed are as follows: the Bill enables the Governor to give an early 'No' to proposals. This means that proponents will not have to finance unnecessary studies, and the community will not need to be concerned about proposals which have no likelihood of ever being approved. The guidelines relating to the issues to be studied which are given to the proponent are intended to ensure that costly side issues are not being investigated. The assessment report prepared on behalf of the Minister is independent from the EIS prepared by the proponent, and so the current delays in discussions on amending the EIS will be eliminated. The proponent, the community and the Governor must have regard to the planning strategy when assessing an EIS, so that gives everyone a context within which to assess major projects. The Governor can grant a provisional consent after the EIS process has been completed, but prior to detailed drawings being prepared. Such a provisional consent will give the proponents a clear indication as to whether it is worth spending more money on detailed plans.

Thus, the Bill provides for progressive decisions to be made which saves money and concern, and provides much needed greater certainty. It has been suggested that the Environment Protection Authority, rather than the Office of Planning and Urban Development, should be responsible for the administration of EISs. The Government does not support this approach because it is clear from the Bill, and in fact, in the current Planning Act that an EIS does not just relate to environmental issues. The issues to be addressed in an EIS are the full range of social, economic and planning as well as environmental matters, which are needed to be addressed in order to ascertain whether a development should be approved. Given that the EIS must have regard to all the relevant matters necessary to assess a development application, it is vital that the EIS be assessed by people associated with the Development Act system rather than the Environment Protection Authority. This will not only mean that the EIS addresses all matters, but it will ensure that the EIS process is an integral part of the development assessment process, and not a separate exercise. Although the EIS will be assessed by staff associated with the Development Act system the staff of the Environment Protection Authority will be involved in

the EIS process, and the EPA will be expected to provide comments.

The Government intends that all development undertaken by State departments and agencies will be required to conform to the same policies and standards as those applying to private sector proposals. For example, all Crown developments involving building work will be required to gain a provisional consent against the building rules from a private certifier or a suitably qualified public official who has not been involved in the design process. All Crown developments will be assessed against the relevant development plan and councils will be given two months to comment on the proposal before a decision is reached. Where, for reasons of public importance, the Government decides that a proposal contrary to the plan must go ahead, that decision must be advised to Parliament, but I indicate this is expected to occur only very rarely.

The Crown cannot be bound to exactly the same process as a private application for the following reasons: first, the Crown can be relied upon to construct safe buildings, so strict external controls on construction are not warranted; secondly, obliging Crown building work to satisfy all the notifications and other administrative processes in part 6 would unreasonably delay and frustrate essential projects for little apparent gain in terms of safer outcome; and, thirdly, as a matter of principle it is not considered appropriate for Crown development, which often has implications beyond one council's area, to be decided by that council alone or, if appeals were to be allowed, by the ERD court. The Government is responsible to Parliament and the people for making responsible decisions and that is where proper accountability lies. I look forward to constructive discussion in the Committee stage of this Bill.

Bill read a second time.

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

PAPERS TABLED

The following papers were laid on the table:

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

Corporation By-Laws-

Mitcham-

No. 2-Street Traders

No. 3-Garbage Removal

No. 4-Fire Prevention

No. 8-Poultry

No. 9-Bees

QUESTION TIME

SPEECH PATHOLOGY

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Ministers representing the Minister of Health, Family and Community Services and the Minister responsible for children's services a question about speech pathology.

Leave granted.

The Hon. R.I. LUCAS: An Opposition survey of the waiting times that young people currently face to obtain assessment and therapy for speech problems has revealed some alarming statistics. In some places in the metropolitan area children can wait anything up to six months just to be assessed by professionals as to whether they require speech pathology. Once assessed, children can then wait up to 18 months before they receive therapy, and even then they may receive fewer hours per week of therapy than they really require. I am advised, for example, that the Munno Para Community Health Service currently has a six-month waiting time for children to be assessed for speech disorders. At the Lyell McEwin Health Service children face a two-month wait for assessment of speech problems and a further four-month wait before therapy can begin.

The waiting list for pathology services of the northern region of the Children's Services Office is more than five months and, when it is obtained, therapy is limited to two sessions a term, each session lasting between 45 and 60 minutes. For many children with speech or hearing problems this allocation is totally inadequate. In some cases, children are in real danger of going to school with a language problem that later leads to a literacy disorder. In the Barossa Valley, country people face even greater difficulty in securing speech pathology services for their children. I am advised that the speech pathologist who visits Tanunda does so for one day a month and has a long waiting list. Angaston receives a speech pathologist for half a day once a month, and again has a long list. Hutchinson Hospital at Gawler has a paediatrician visit half a day a month, and again has a long waiting list.

In the south, the situation is little better. For example, 91 children are on the Flinders Medical Centre's waiting list for speech pathology services, with some facing an 18-month wait for therapy. My questions to the Ministers are:

1. What steps are the Ministers and the Arnold Government in general taking to reduce significantly these unacceptable waiting times that children currently face to obtain speech pathology services?

2. Do the Ministers believe that children should face an 18-month wait for therapy even after their problems have been diagnosed?

The Hon. BARBARA WIESE: I will take responsibility for coordinating a response to the questions asked by the honourable member. I am not sure whether the Minister responsible for children's services has direct responsibility in this area, but I will make sure that information is collected from the appropriate agencies and I undertake to bring back a reply.

PLANNING APPEAL TRIBUNAL

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question about Planning Appeal Tribunal appointments.

Leave granted.

The Hon. K.T. GRIFFIN: Commissioner Kenneth Tomkinson, of the Planning Appeal Tribunal, took action in the State Supreme Court against the State of South Australia for a declaration that he was not subject to any

The Hon. K.T. GRIFFIN: Commissioner Kenneth Tomkinson, of the Planning Appeal Tribunal, took action in the State Supreme Court against the State of South Australia for a declaration that he was not subject to any mandatory retirement age. Mr Tomkinson attained the age of 65 years on 5 March this year. He was first appointed to the former Planning Appeal Board for a term of four years from 1 July 1967.

He was appointed as full-time commissioner in October 1972 and the retiring age was 65 years. Because of a number of changes to the law in the intervening years, the Supreme Court held in February of this year that Mr Tomkinson was not compelled to retire at the age of 65 years, although the Governor could at any time, even now, impose a condition on Mr Tomkinson which would require him to retire now. I am told that a submission was made to Cabinet on or about 29 March 1993 that a retiring age be imposed upon Mr Tomkinson, but Cabinet rejected the proposal. Since the Planning Act 1982 came into operation in 1982, two other commissioners have been appointed, one to retire at age 71 years and one without any retiring age.

The Hon. C.J. Sumner: That is not right.

The Hon. K.T. GRIFFIN: Justice Perry said in the Supreme Court that that was so. If the judge is wrong you can make an observation on it. In respect of Commissioner Tomkinson, he has not been listed to hear any conciliation conferences for the past two years because his performance is unsatisfactory. He sits only with a judge on Full Bench cases. That obviously is unsatisfactory and cannot be a cause for confidence in his work. Someone has indicated to me—and I am not personally aware of this—that Commissioner Tomkinson is a close friend of many in the ALP. In the review of legislation relating to age limits—the working party report which the Attorney-General tabled earlier this week—it does not appear that the working party reviewed the Planning Act or any aspect of the retiring age of commissioners. My questions to the Attorney-General are:

1. Why was the submission to Cabinet rejected?

2. What is the Government proposing to do about retirement of planning commissioners?

3. Why is there a marked difference in practice in relation to the conditions of appointment of commissioners in respect of retiring age?

4. Can he indicate who funded Mr Tomkinson's court case?

The Hon. C.J. SUMNER: The submission was not rejected, as I recall it, but was referred back to me to enable the matter to be examined further, because certain representations had been made to me. It is also true that a commissioner who retired a year or so ago—Commissioner Bullbeck, I think—has also made representations about his status because he retired and now the judge has found that there was in fact no retiring age at 65. So, that is a matter that is being examined. I also have to look at the situation of the case that was dealt with in the Supreme Court. It has been put to me that the remarks of Justice Perry were *obiter,* they were not central to the case, and that if the Government does decide to proceed to set a retiring age of 65 then there may well be another challenge.

As I understand it, the development Bills that are currently before this Council do resolve the problem by imposing a retiring age of 65. I think from what I know of them that that would apply to the existing commissioners. That is something that members may care to look at in the Committee stages. Of course, those Bills presumably will not be proclaimed to operate for some time, at least, because of what has to happen to get the administrative arrangements in place. However, I believe that the Bills as introduced would resolve this problem and impose a 65-year retiring age.

I understand what the honourable member is saying about this retirement age at 71 in relation to one commissioner. I will get further information on that, as indeed I will on the whole topic when I have had the legal advice on it, not just in relation to Commissioner Tomkinson and those who are currently there but also in relation to the commissioner who retired a year or so ago. My understanding is that there was a clerical error of some kind or a typographical error which showed in the *Gazette* one of them retiring at the age of 71, but the minutes of the Executive Council do not in fact show that. So, there was an error. But I will check that and bring back the response to the honourable member.

So I do not believe there is a difference in practice. Certainly, it was not intended that there would be. Indeed, the Crown Solicitor's advice was that the retiring age for planning commissioners was 65. That is why the case that Mr Tomkinson took to court was defended, but the judge took another view. I am not sure whether Mr Tomkinson funded that case personally. It certainly was not funded by the Government, if that is the implication of the honourable member's question.

The Hon. K.T. Griffin: I did inquire as to who funded it, whether or not it was the Government.

The Hon. C.J. SUMNER: No, it certainly was not the Government; not up front, anyhow. Obviously, because we lost the case, costs were awarded against the Government in the matter. But the Government certainly did not fund the case up front. In the light of the advice I had received from the Crown Solicitor that the retirement age was 65, I was not prepared to accede, without a court decision, to allow Mr Tomkinson to continue in office. But we now have the court decision and we have to sort out what to do with it. One option is to take the judge's advice and proclaim the age at 65.

However, as I said, certain representations were made to me by Mr Tomkinson about that matter and he has put certain things to me, one of which is that, on his legal advice, the remarks of the judge are *obiter,* that is, not central to the original decision. On his legal advice they are wrong and we may face further court proceedings if the Government decides to go this way. However, there is his case, there are the existing commissioners and there is the case of the commissioner who retired a year or so ago that have to be resolved and I am in the process considering these representations and getting legal advice. I will bring back a further reply when I am in a position to do so.

FILM INDUSTRY

The Hon. DIANA LAIDLAW: I seek leave to make an explanation before asking the Minister for the Arts and Cultural Heritage a question about the film industry report.

Leave granted.

The Hon. DIANA LAIDLAW: Last December the Minister received the report by the working party chaired by Ms Gabrielle Kelly into the structure and effectiveness of the commercial film industry in South Australia. As the working party had recommended that the report be released for immediate distribution and public discussion, I asked the Minister on 9 February why she had not done so. In reply the Minister said that she had read the report, that she had discussed the contents with officers of the department and that she hoped to be able to release it in the very near future. She also said:

> ...there are some factual errors in the report and I want to get the agreement of the working party to the corrections of those factual errors before I release the report.

As it is now four months since the Minister received the Kelly report, it is hardly surprising that independent film producers in this State are becoming impatient and, they tell me, frustrated. In the past fortnight I understand that a number of film producers have written to the Minister asking why she has not yet released the report. Also they have sought urgent consultations with the Minister on the recommendations prior to the Minister confirming the Government's response to the report. In the meantime, it appears that the Minister's refusal to release the Kelly report has placed the board of the South Australian Film Corporation in an awkward situation in respect of negotiating the renewal of the term of appointment of the Executive Director, Ms Valerie Hardy. Ms Hardy's contract expires in June. I understand that the board has been seeking to renew Ms Hardy's contract for a period of two years but that the Department for the Arts and Cultural Heritage has been insisting that it be renewed for one year only. The department of course has the advantage of knowing the recommendations of the Kelly report, but the board—at least officially—does not. I ask the Minister:

1. When will the report be released and, at the time, will it be released for public discussion as recommended by the working party, or will. it merely accompany a statement confirming the Government's response to the report?

2. Did the working party agree with the Minister's assessment that the report contained factual errors and, if so, what were the nature of the errors and what amendments have been made, presuming of course that the working party did agree to make the corrections that the Minister had sought?

3. As the Chair of the working party, Ms Gabrielle Kelly, was appointed by the Minister to represent independent producers in South Australia on the Film Industry Advisory Committee and as she is now employed by the South Australian Film Corporation as marketing manager, who now represents the interests of independent producers on the committee, which the Minister has asked to relook at some aspects of its report and possibly correct those aspects?

The Hon. ANNE LEVY: I do not know where the honourable member gets her information, but I am afraid it is a rather garbled indication of the current situation.

The honourable member mentions that certain people are frustrated at not yet being able to see the report. I indicate that I share that frustration: I have not yet seen the final report.

The Hon. Diana Laidlaw interjecting:

The Hon. ANNE LEVY: The final report has not reached me. I have not seen it. There is no question about how long I am going to hold it before I release it—I have not even got it.

The Hon. Diana Laidlaw: What did you receive in December?

The Hon. ANNE LEVY: I received what I suppose can be called a draft. It was certainly a report that I read: it contained factual errors, straight factual errors. One did not have to be Einstein to see that there were errors in it, because the figures did not add up. The figures printed in the report did not come to the total which they said they came to: it contained straight factual errors.

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: The report was returned to the working party for the factual errors to be corrected. As I understand it—I have not spoken to them personally—the working party agreed that there were factual errors that needed to be corrected. It may be that along with correcting factual errors the working party may have decided to make some other changes to the report—I do not know. I have not received it. I certainly hope to receive it in the near future, but at this stage I have not received it. In terms of representation, the individuals who made up that working party were selected for their knowledge, capability, experience and abilities in the area of film in South Australia. The fact that Ms Kelly changed her employment a couple of months ago does not in any way change her knowledge, experience, abilities or skills in the area of film.

The Hon. Diana Laidlaw: Maybe her perspective.

The Hon. ANNE LEVY: I would be surprised if she does not bring exactly the same knowledge, skills, experience and background now that she did a couple of months ago. At this stage it would be quite fatuous to suggest that the membership of the working party should be changed considering the vast amount of work that has been done conscientiously by all members of that working party. Certainly, I hope and expect to receive the report in the near future.

The Hon. DIANA LAIDLAW: As a supplementary question, in relation to Ms Valerie Hardy's appointment as Executive Director and the negotiations for an extension of her term, can the Minister clarify the position in respect of the department's lobbying for and pressure as I understand it on the board that the term be renewed for only one year and not two years? If this is not based on the report, as the Minister has suggested, because the final copy has not been received, on what basis is the department arguing that case?

The Hon. ANNE LEVY: Mr President, I am happy indeed to answer that question, but I do not think it comes into the category of a supplementary question. The original explanation by the honourable member

referred to Ms Hardy, but her three questions made no reference whatsoever to Ms Hardy. Consequently, my response made no reference whatsoever to Ms Hardy because I was answering the questions the honourable member had asked, so I do not see how it can be a supplementary question that arises from my answers.

The Hon. Diana Laidlaw interjecting:

The Hon. ANNE LEVY: You asked me who was representing the independent producers—that was your third question—and obviously I answered it. The honourable member's question did not in any way relate to Ms Hardy: her explanation did, but not her question.

The PRESIDENT: It is entirely up to the Minister how she answers the question and, if she is not prepared to answer it at this time, I am sure the Hon Ms Laidlaw can ask the question later.

The Hon. ANNE LEVY: I will take it as a further question, Mr President. I take it that the explanation for it was contained in the explanation to her first series of questions. I point out to the honourable member that, if she reads the legislation establishing the Film Corporation, she will note that the Managing Director of the corporation is appointed by the Governor, which means that the individual is appointed by Cabinet on the recommendation of the Minister. Obviously, the board plays a role in the appointment of a Managing Director for the corporation, but it is a Government responsibility. As the department's officers are the chief advisers of the Minister, officers of the department obviously have a role to play in this matter seeing that the appointment is made by the Governor in Council. It would be most inappropriate if they were denied any role in that matter.

The Hon. Diana Laidlaw: Why is it only for one year?

The Hon. ANNE LEVY: I cannot remember when it was, but it would be over 12 months ago, arrangements were made with the Film Corporation which were detailed in this Parliament and about which there have been many queries, both in Question Time and during the Estimates Committees, where it was announced that there would be a review of the corporation to take place before 30 June 1994. That is not a secret—it has been public knowledge for a considerable time. That review has not taken place yet, and it would be quite inappropriate to undertake it at this time—12 months from now would be the appropriate time to begin that review. In the light of that fact, which is a well known fact, it does not seem to me inappropriate that it be suggested that a firm contract be for a period of 12 months, renewable subject to the outcome of the review of the Film Corporation. It seems to me that, to suggest otherwise, could be a potential risk in taxpayers' money—

The Hon. Diana Laidlaw: Aren't you happy with her?

The Hon. ANNE LEVY: —and it is the responsible approach to take. In response to that interjection, to suggest that I am not happy with Ms Hardy is totally erroneous. She has acquitted herself extremely ably as Managing Director of the South Australian Film Corporation and I am sure that is attested to by everyone in the film industry, not only in this State but around Australia—

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: *Order!*

The Hon. ANNE LEVY: —and to suggest otherwise is grossly offensive.

The Hon. Diana Laidlaw: Well, she finds it offensive, so—

The PRESIDENT: Order!

RAPE IN MARRIAGE

The Hon. I. GILFILLAN: I seek leave to make an explanation before asking the Minister for the Arts and Cultural Heritage a question relating to Justice Bollen's remarks and her ministerial statement.

Leave granted.

The Hon. I. GILFILLAN: As reported in the *Advertiser* on Wednesday morning in an article with the headline 'Full court overrules Bollen', the Full Court found two to one that Justice Bollen made an error in law when making comments during his summing up to the jury in one matter and made a unanimous finding in another. The dissenting judge was none other than the Chief Justice of South Australia, Justice King. Therefore, of the justices of the Supreme Court involved to date the score is two all: Justices King and Bollen on one side and Justices Perry and Duggan on the other. It could hardly be said that there has been a strong rejection by the Supreme Court of South Australia of the statement made by Justice Bollen of 'rougher than usual handling' being acceptable in persuasion to engage in sexual intercourse.

The Minister, in her statement, told State Parliament she was relieved that the finding upheld current society attitudes and said she looked forward to a time 'where such comments will not be countenanced by anyone in our community', and certainly I thoroughly agree with that. I will quote two paragraphs from her statement:

> On the question of Justice Bollen's saying that it was acceptable for a husband to use 'rougher than usual handling', a majority of two judges to one found this to be an error in law. This decision clearly underlines that these sorts of comments are not acceptable under South Australian laws and should not be used by senior members of the judiciary.

I will just point out that the dissenting judge happens to be the Chief Justice of the State who, clearly, does not agree with that particular judgment. In his judgment supporting Justice Bollen, the Chief Justice implies that what he euphemistically describes as 'boisterous playfulness' is acceptable in the course of persuasion to engage in sexual intercourse. It is a quote from the judgment. I would like to quote from his finding and—

Members interjecting:

The PRESIDENT: Order!

The Hon. I. GILFILLAN: —in fairness to the Chief Justice I think it is important that I read the paragraph in full. This is in relation to 'rougher than usual handling':

> The Solicitor-General's first argument was that the direction was misleading in that it would be understood as conveying that rough handling was a legally permissible means of persuasion with the danger that the jury might conclude that submission in consequence of rough handling amounted to consent. I do not think that the passage 'understood in the light of the evidence and the issues raised by the evidence' is open to that construction. The evidence of the accused was that his methods

of persuasion, when his wife was reluctant, involved trying to smooch to her', but also on occasions involved what might be regarded as boisterous playfulness. I think that the thrust of his evidence, however, when fairly understood, was that these methods were engaged in only when acceptable to his wife and that he desisted when 'she let me know when she couldn't go any further'. The passage in question was directed to the issue raised by that evidence.

The sentence containing the reference to 'rougher than usual handling' also contains the phrase 'in an acceptable way'. In his report to this court, the judge has explained that that meant in a way acceptable to the wife. I consider that a jury listening to the direction with the evidence of the accused in mind could only understand the phrase in that sense. The phrase 'in an acceptable way', that is to say 'in a way acceptable to the wife', clearly governs the whole sentence.

I think anyone who is reading this objectively would realise that it is a very extensive stretch of the imagination to believe that a jury will automatically accept an understanding of 'in an acceptable way' to mean 'in a way acceptable to the wife'. I will further quote from the judgment.

The Hon. Anne Levy: Do you have Perry's judgment there?

The Hon. I. GILFILLAN: No, I have not. The judgment continues:

The Solicitor-General also argued that the use of the expression 'husband, faced with his wife's initial refusal' conveyed the notion that 'rougher than usual handling' was permissible to a husband although it would not be to another. I am unable to discern that meaning in the passage. The use of the words 'husband' and 'wife' simply arose from the fact that that was the relationship of the parties.

The legal position regarding persuasion by a husband of a wife who is initially unwilling to engage in sexual intercourse is quite clear. Wooing and persuasion are not unlawful. 'Rougher than usual handling' if not with the consent of the wife, is an unlawful assault. If the wife consents to 'rougher than usual handling', it is lawful, at least if it stops short of the infliction of physical harm.

Again, I think a reasonable interpretation of this reflects quite clearly that the Chief Justice believes that a husband in context with his wife can use 'rougher than usual handling' and, provided that it does not finish with some sort of injury, it is lawful and it is okay. In the light of that extract from the dissenting judgment:

1. Does the Minister agree that the opinions expressed to date by members of the Supreme Court do not clearly underline that these sorts of comments are not acceptable, especially in the light of the Chief Justice's comments?

2. Is the Minister concerned that the Chief Justice dissented from the criticism of Justice Bollen that she so warmly endorsed?

3. Has she read the judgment of the Chief Justice and, if not, will she do so and report her opinion to the House?

The Hon. ANNE LEVY: I have read the judgment of the Chief Justice. I have also read the judgments of Mr Justice Perry and of Mr Justice Duggan, although the comments from Mr Justice Duggan are brief, as he indicates that he concurs with all the comments from Mr Justice Perry. I am sorry that I do not have Mr Justice Perry's comments with me. They are upstairs, but I would easily be able to quote a considerable portion of Mr Justice Perry's opinion, concurred with by Mr Justice Duggan, who put a very different interpretation on the remarks from that taken by the Chief Justice.

With regard to my statement that the Supreme Court has rejected the use of those remarks, two to one is a majority, and in our legal system when a majority of a court is of one opinion and a minority of another the law is taken to have been determined by the majority. It is rather like a Bill in Parliament. If you have got the numbers—

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: —then you come out on top. Clearly, the majority decision of the Full Court, unless overturned either by legislation in this place or by the High Court of Australia, will be taken to be the law in this State. I welcomed the interpretation of the law in this State which was put forward by the majority of the Full Court of the Supreme Court because that is now, as I understand it, the legal situation.

However, there are a couple of matters that I think the question of the honourable member does raise. He mentions the question of continuing education for the judiciary. He may not be aware that prior to the last Federal election the Prime Minister gave a promise that his Government, when re-elected—

The Hon. Peter Dunn: That would be a ripper.

The PRESIDENT: Order!

The Hon. ANNE LEVY: Well, he was, wasn't he—would provide resources to the Australian Institute of Judicial Administration. For those who do not know, that is the association of all judges and magistrates in Australia. He has indicated that resources would be provided for the Australian Institute of Judicial Administration so that it could conduct continuing education courses for its members which, as I say, includes all judges and magistrates in this country, on the question of gender bias, amongst other matters, to ensure that the judiciary remains cognisant of contemporary community attitudes. This project was to be supervised by Justice Deirdre O'Connor, a highly respected judicial figure in this country, and I am sure that this matter is proceeding.

Consequently, it seems to me far better that it be done on a national level rather than each State attempting to undertake its own program, although I understand that the Western Australian judiciary has commenced and is undertaking continuing education on gender bias and gender neutrality in the court system under the auspices of its own Chief Justice. However, as the Prime Minister has now promised that this will occur at a national level, I welcome his comments and look forward to when Justice Deirdre O'Connor is able to implement this important program.

The only other comment that I think I should make is one which has been made by other people but which I think is worthy of getting into the *Hansard* record. In terms of one spouse attempting to persuade another spouse by whatever suggestion or by whatever methods are being contemplated, I refer to the comment of someone who just asked, 'What don't you understand about the word "No"?'

The Hon. I. GILFILLAN: As a supplementary question—

Members interjecting:

The PRESIDENT: Order! The Council will come to order. The Hon. Mr Gilfillan.

The Hon. I. GILFILLAN: Has the Minister yet enrolled the Chief Justice in the judicial course for gender bias?

The Hon. ANNE LEVY: As it is not my function to do so, I obviously have not done so.

RAILWAYS, COUNTRY

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

Leave granted.

The Hon. PETER DUNN: A report to the Federal Government regarding ANR and the National Rail Corporation was reported in the *Advertiser* on 15 April. I will quote from this report, which appears quite factual, from what I can understand, although it has some quite unusual implications, as I read it. It states:

> The State Government, under the terms of the Rail Transfer Agreement of 1975, has the power to block any sale, transfer or closure of former SA Railways services by the Commonwealth.

I think that is well known amongst the people of South Australia. It goes on to state:

> AN's role in the freight network is unclear because the NRC will take over many of its profitable operations. The residual services of AN under discussion which will not become part of the NRC's Australia-wide freight network, include the Leigh Creek coal trains, Eyre Peninsula grain, and Mt Gambier freight... The profit-making operations, such as those taking coal from Leigh Creek to Port Augusta and lead concentrates from Broken Hill to Port Pirie, most likely would be handed to private contractors or companies themselves if they were taken out of AN control. Eyre Peninsula grain lines probably would be closed.

Bearing in mind that I have heard no denial or spirited defence by the Minister for the retention of those railways, my questions are:

1. Is the Government so weak that it cannot parry the onslaught of a Federal Public Service report to close country rail services in South Australia?

2. Why would Eyre Peninsula railways be closed?

3. If that is to happen, will the Minister find some millions of dollars to upgrade the roads running parallel with the railway lines so that the grain can be carted by road train?

The Hon. BARBARA WIESE: I do not know where the honourable member has been for the past few weeks, but I have been in the newspapers, on the air waves and in all sorts of places putting the position of the South Australian Government with respect to a recent consultancy that was commissioned by the Federal Government, which is looking at the future of Australian National following the establishment of the National Rail Corporation.

Whilst the consultancy study, as I understand it, is to look at a wide range of options which include the possibility of privatisation of some parts of what is now AN's business, as I understand it, that is designed to collect all the appropriate information required by the Federal Government in determining a position on the future of the National Rail Corporation and of AN.

No decisions have been made at this point about any of the lines to which the honourable member refers. As I understand it, although I have not yet seen the business plan for Australian National, Australian National has certainly not argued that the grain lines on Eyre Peninsula should be privatised or closed, but that is something that I will be confirming when I see the draft business plan.

Also, there should not be any suggestion that the Leigh Creek line should form any part of the business of the NRC, because that is intrastate business and under no stretch of the terms of the agreement on the formation of the NRC could it be suggested that rail business within the State is interstate business and, therefore, a reasonable part of the business that should be taken over by the National Rail Corporation.

So, although many issues are to be determined and discussed, there are also some rumours circulating around the State and around the country that have no status, as far as I am aware, and I would hope that, once serious discussions take place with the relevant parties, much of the uncertainty that currently exists can be overcome, and the future of rail in South Australia can be determined—and determined in such a way as to protect the interests of those who are using lines that are currently returning a profit to Australian National, and that that business can be kept on rail and not transferred to road transport. We certainly do not want to see an increase in road transport carrying grain from places like Eyre Peninsula when we already have a perfectly satisfactory rail system carrying grain to the ports and providing an adequate service to farmers and to our community. So, there are numerous things that I want to take up with the Federal Minister when I get the opportunity and I am quite sure—

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: —that Australian National will want to take those things up. In response to the Hon. Ms Laidlaw's interjection, I will be taking up the terms of the rail transfer agreement in very strong terms with the Federal Government, and I hope we will be able to achieve some results that are in the interests of this State.

TAFE COLLEGE CRASH REPAIRS

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Minister representing the Minister of Education, Employment and Training a question about car repairs at a TAFE college.

Leave granted.

The Hon. L.H. DAVIS: Mr President, I have had serious allegations made to me regarding car repairs being carried out by a TAFE college in the western suburbs. In October 1991, a person in a vehicle collided with another motor vehicle driven by a lecturer from a TAFE college in the western suburbs. Because the first person believed that they may have been in the wrong they agreed to pay for the repairs of the damaged vehicle

owned by the TAFE lecturer. The TAFE lecturer went to the driver's house with two quotes and said that he would like to accept the lesser of these two quotes, wich was from Queenstown Crash Repairs. The quote totalled $4 747.33. A post box at Alberton was given as the address for Queenstown Crash Repairs, and I have a photostat of this 2½ page quote. This hand-written quote has handwriting which seems not dissimilar to the handwriting of the lecturer himself.

The lecturer claimed initially that the vehicle was at Queenstown Crash Repairs already. He also claimed that he had obtained a full front clip for his damaged vehicle for $600 which effectively covers major parts forward of the windscreen. The driver paying for the repairs to the lecturer's car, not surprisingly, wanted an independent inspection to ensure that the quote was not excessive. The lecturer became evasive when asked again about the whereabouts of the vehicle, and finally admitted that it was, in fact, at his place of work, which was at a TAFE college. The first thing next morning the TAFE college was visited and the lecturer's vehicle was quickly identified. Students confirmed this fact, and that the vehicle was waiting there for parts and was being repaired at the college by students. The driver and his family were understandably most unhappy with what they discovered. They made further inquiries and established that Queenstown Crash Repairs existed in name only, and that the address given for Queenstown Crash Repairs was now a carpet shop. This was despite the fact that, as I have already mentioned, the driver had been provided with a quote from Queenstown Crash Repairs, and was told that this was where the lecturer's car was stored.

After telling the lecturer that they wanted an account for the true cost of repairs, they later received a bill which stated '...College of TAFE account'—I will not name the college at this stage but will provide that to the Minister later—for a total of $2 423.24. The driver is disputing this account. The driver obtained quotes from three other car wrecking companies for the parts required, two for $1 496 and one for $1 446. So, the TAFE account is $1 000 more than each of these three quotes. The lecturer had earlier admitted obtaining a front clip for $600, but in fact in the account all the parts from this front clip are listed separately and charged out at $1 807.81.

This matter again raises serious questions about the use of TAFE colleges for the repair of vehicles owned by lecturers and friends of lecturers. In this particular case there is a strange and worrying sequence of events: the allegation that the car was at a crash repair company which apparently had not been operational for several years; the later admission by the lecturer that the vehicle was at the TAFE college; and an initial quote of over $4 700 for repairs to a 1982 vehicle which would have had a market value of little more than $4 000 would suggest a rip-off of serious dimensions.

Only when anger was expressed about the high cost of repairs, was the bill halved to $2 400, and this was still $1 000 more than the three other quotes obtained, even though students' work is allegedly charged out at only $2 an hour. The circumstances of this case demand an immediate and thorough investigation. I will provide the name of the college to the Minister to assist in her investigation. My questions to the Minister are:

1. Will the Minister ascertain why the lecturer made misrepresentations regarding the fact that the car was being repaired by Queenstown Crash Repairs?

2. Was the account received by the driver for $2 423.24 for the crash repairs done on the lecturer's car an official account from the TAFE college concerned?

3. Does the Minister regard as acceptable the circumstances outlined, and will the Minister investigate persistent allegations made by former students of the TAFE college concerned, as well as several motor vehicle crash repairers in the private sector, that there have been unacceptable irregularities in the painting and repairing of vehicles at this TAFE college?

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

BOATS

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister of Transport Development a question about boat licences.

Leave granted.

The Hon. M.J. ELLIOTT: Amendments to the National Parks and Wildlife Service Act currently before Parliament will create the opportunity to prescribe the Australian whale watching guidelines as enforceable regulations. This will be a step forward as the guidelines set out minimum distances that boats must keep from whales, and the problem in the past is that they have not been enforceable. Perhaps also, despite media publicity and pamphlets produced by the national parks, not all boat owners have been aware of the guidelines.

Boats, along with helicopters, cause the greatest disturbance to the whales now returning to our inshore waters during the winter months. Some of this disturbance is deliberate, and this will be picked up by other amendments to the Act which will make it an offence to ignore a direction of a warden. However, some boat owners I am sure have not been aware, not only of the minimum required distances of boats from whales, but the effect that the presence can have on the animal. Should the guidelines be incorporated as regulations under the National Parks and Wildlife Service Act, breaching them could carry a maximum fine of $30 000.

As a way of raising boat owners' awareness it has been suggested to me that questions relating to whales and boat behaviour near whales should be included in tests for boat licences to ensure that all new licence holders are aware of their responsibilities. A further step to that would be to include on the actual licence, along with other conditions, a reminder about boat distances from whales. My questions to the Minister are:

1. Has the issue of educating boat licence holders of their responsibilities towards whales been canvassed in your department?

2. Would she consider the two avenues I have raised of using the licensing process to raise awareness of the minimum distances boats should keep from whales?

The Hon. BARBARA WIESE: I am not able to answer the first question. I am not sure whether the question of education about this matter has been considered within the department. As to whether the

licensing approach is the best way to go in order to provide information for people is something that I will give some consideration to. I must say that, on the face of it, I have some reservations about whether that is the most appropriate way to draw people's attention to the matter, and that it may be better to do it through other means. There are already, for example, brochures and other forms of information that are provided to people in order to educate them regarding boating regulations. It could be that that is a more appropriate form of communication with the public about their responsibilities in this area. I will undertake to have the matter examined and, if there is something that can be done in a reasonable way which is not enormously costly, then I will examine what options exist.

SOUTH-EAST GROUND WATER

In reply to **Hon. M.J. ELLIOTT** (11 March).

The Hon. ANNE LEVY: The Minister of Public Infrastructure has advised that from the context of the explanation given by the honourable member prior to asking his unfinished question, it is presumed that the intent of the question was to enquire why, four years after the issue of nitrate contamination was raised by the honourable member in Parliament, has no further action been taken.

Of course nitrate contamination is of concern in the South-East, just as it is in any developed country with groundwater underlying agricultural pursuits. Fortunately the water in extensive aquifers in the South-East is still of excellent quality and the Government intends to make sure it remains that way.

The honourable member obviously has some recollection of the media attention given to the groundwater issue during 1989-90. To ensure that the community was informed about the status of the groundwater quality it became clear that all data available from the extensive monitoring of the aquifers needed to be brought together and presented publicly. During May 1990 the Engineering and Water Supply Department let this investigation to an expert groundwater consultant (J D Waterhouse of A G Consulting Group) to provide an independent overview to stem the media speculation. This report was released in November 1990 and presented publicly in February 1991.

The review concluded that 'evidence does not support the existence of a widespread groundwater problem in the South-East of South Australia. Pollution of groundwater appears to be restricted to specific locations such as sites used for industrial and some waste disposal purposes.' These latter problem sites are mainly a result of historically inappropriate practices which were stopped many years ago. The recommendations in this report have been accepted as sound and are being progressively implemented by the E&WS Department.

The groundwater resource in the South-East is of strategic importance to the State due to its extensive size and good quality. Management of the resource has focussed on prevention of contamination from intensive industrial/agricultural activity, in conjunction with ensuring the long term sustainability on a regional scale. To assist this management the following investigation and management programs are currently underway.

Land Use Impact on Groundwater Investigation	- E&WS
Preparation of Guidelines for Landspreading of Waste	- CSIRO coordinated consultancy for E&WS
Blue Lake Management Plan	-E&WS
Nitrate Leaching Under Irrigated and Non-Irrigated Pasture	-CSIRO
Aquifer Vulnerability Mapping	-CSIRO
Landfill Monitoring	-E&WS & WMC Industry
Monitoring of Operations	-E&WS
Historic Pollution	-DME

The E&WS Department provides a free nitrate water testing service to the community and in this way helps the local landowners understand and deal with local contamination issues. The Department also benefits in that it gains greater information about nitrate contamination in the South-East. There are also on-going investigations conducted by E&WS Department into specific localised nitrate and other pollution plumes in the South-East.

In addition to investigation work, considerable effort has been and continues to be expended to educate the public about water pollution. Also, much effort is being made to ensure industries adopt the 'best practice' in containment and elimination of practices which are potentially causing stress to the aquifers. This work is ongoing and is meeting with success.

As is evidenced by the above, the assertion that no action is being taken is incorrect. The E&WS Department, in conjunction with other government bodies, have and are continuing to expend considerable effort to monitor and effectively manage the groundwater in the South-East.

CHILD, ADOLESCENT AND FAMILY HEALTH SERVICE

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister representing the Minister of Health, Family and Community Services a question about the Child, Adolescent and Family Health Service.

Leave granted.

The Hon. BERNICE PFITZNER: It has been brought to my notice that the Child, Adolescent and Family Health Service (CAFHS) is to be reorganised into fewer regions and divisions. I am aware that at present 10 or more senior nursing officers employed as clinical nurse consultants and nurse managers will be affected. Basically, following the reorganisation, these senior staff will contract from approximately over 10 positions to approximately three positions. I understand that there will be no further senior positions other than the three positions, and that the remainder of the senior nursing officers will return to standard nursing duties at regular clinics. My questions are:

1. Where will the other senior nursing officers be placed?

2. If the senior nursing officers are to do routine duties, how can one justify their higher salaries?

3. Again, if they are to do routine duties, how will that affect the morale of the other staff who are doing the same duties but on salaries at a lower level?

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

ADELAIDE AIRPORT

In reply to **Hon. M.J. ELLIOTT** (20 April).

The Hon. BARBARA WIESE: Before answering the honourable member's questions let me say how pleased I am that a member of another party has recognised the important role that the airport plays in the State's economy, and the need for airport development.

It was only last October that a member of the 'development' party on the opposite bench in another place was proposing that the House reaffirm a 14 year old motion effectively to prevent the very development to which the honourable member now refers.

This Government has consistently supported development at Adelaide Airport because it does recognise the importance of export capacity—both in terms of air freight and inbound tourism—to our major markets. In particular, the Government has already made the case in the strongest possible terms for an extension of the main runway to the Federal Airports Corporation and the Federal Government.

However, it is evident from the inaccuracy of some of the statements in his preamble to his questions that the honourable member has an incomplete grasp of the issue. It is a very technical issue and I do not propose to bore him with too much tedious detail, but it is important to understand a number of points:

A fully laden B747 can in fact take off from Adelaide Airport. The problem is how far it can fly fully-laden, which depends on the weight of fuel it can uplift in addition to its payload. From the existing runway, a B747-400, the newest version, can fly fully laden to Tokyo under most conditions, for instance. Other aircraft, including most aircraft used by international carriers to Adelaide, suffer payload penalties of varying severity to destinations north of Singapore so that, depending on the number of passengers carried and the atmospheric conditions, freight uplift may be restricted.

A case in point is Cathay Pacific Airways' Hong Kong services. That airline operates a tight from Adelaide to Hong Kong via Melbourne. When it introduces its second flight in June it would optimise its service to both the Melbourne and Adelaide markets if the flight were routed in via Melbourne and out direct to Hong Kong. The payload limitations imposed by Adelaide's runway length have forced it to schedule the flight on the same routing as the first—to the commercial disadvantage of both the airline and South Australian exporters. I am glad to say that Cathay Pacific has made its views known to the Federal Airports Corporation.

Air cargo tariffs are identical out of Adelaide and Melbourne for dairy products. However, the actual freight rates paid by shippers depend on a great many factors including volumes shipped, individual agreements between shippers and freight forwarders, supply of and demand for freight capacity, and so on. Comparison of rates charged to shippers from different ports is therefore extremely difficult and the honourable member would have to be much more specific before his statement that South Australian shippers incur a 15 cent per kilogram penalty could be substantiated. Information given to me by major shippers of dairy products out of both ports is that the differential is more like 2 to 3 cents per kilogram.

What is far more important is the availability of air freight capacity to exporters out of Adelaide. At the moment up to 60 per cent of South Australian exports by air are transhipped via other ports. This is partly, and perhaps primarily, because of lack of available capacity out of Adelaide. There are other reasons. Riverland exporters, for example, may find it cheaper to ship their products from Melbourne Airport, shipment consolidation in Melbourne or Sydney may offer advantages to shippers, and so on. It may be the additional cost of involuntary transhipment to which the honourable member refers.

To increase the availability of air freight capacity out of Adelaide we have to attract more international services to Adelaide Airport, and that depends on many factors other than a longer runway. Airlines make route implementation decisions on the basis of their assessment of passenger revenues so that although a demonstration of air freight opportunities forms part of the commercial case we make to prospective airlines, it is extremely unlikely that an airline will implement flights to Adelaide on that basis alone.

It is also true that airlines make their decisions on the basis of what infrastructure is in place. The Federal Airports Corporation maintains that with the exception of Cathay Pacific, no airline has made demands on it for a longer runway and it is therefore unnecessary. What we have to demonstrate, and like any supply-led argument it is extremely difficult, is how many additional flights we could achieve with a longer runway that would not operate under existing conditions.

That leads me to the specific questions the honourable member asked:

1. What work has been done on the costs and benefits of extending one of Adelaide Airport's runways or relocating and expanding the airport?

2. Does the Minister agree that such an investment in the State's infrastructure will significantly boost our chances of success on the international market as far as fresh produce is concerned?

In answer:

1. Indicative costs for a runway extension and the various road diversion or tunnel options to accommodate it have been prepared on the basis of preliminary design calculations and available geotechnical data. Indicative costs for the extension itself are being reviewed by a consultant, together with an analysis of the benefit that may be derived from the extension going ahead. The results of that consultancy are expected to be available to me in the near future.

Considerable work has been done on the desirability or otherwise of relocating and expanding the airport. This includes detailed study of the Two Wells site by the Department of Aviation in 1986, and a study of the costs involved in a change in airport location by Professor Burns of Flinders University in 1989/90.

All data to date support the development of the present site rather than relocation to a new site.

2. Yes. However, investment decisions must be based on far more than 'significant chances of success'. As I indicated in my preamble to these answers, justifying a supply-led infrastructure argument, although easy to do when preaching to the converted, is extraordinarily difficult when hard economic data to support investment decisions is required. It is that justification which is in progress.

STATE BANK

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Attorney-General, representing the Treasurer, a question about the State Bank.

Leave granted.

Sydney; Mr Kerry Stokes of Western Australia; Sir Lawrence Govan of New Zealand; and Sir Sydney Schubert of Queensland. My questions are:

1. Will the Treasurer confirm or deny that such people were appointed as advisers to the State Bank?

2. What were the terms and remuneration conditions of their appointment?

3. What specific advice or advantage did these appointments bring to the State Bank?

4. Are any of these advisers still engaged by the State Bank and, if so, what is the specific advice that is being provided to the bank and what fees, if any, are being paid for such advice?

The Hon. C.J. SUMNER: I will pass those questions on as usual.

BUS VANDALISM

The Hon. DIANA LAIDLAW: I wish to make a brief explanation before asking the Minister of Transport Development a question about vandalism on STA buses.

Leave granted.

The Hon. DIANA LAIDLAW: Late yesterday I received advice from a troubled worker in the STA about vandalism of buses in the southern suburbs. I was informed that bands of youths are engaging in a new game, and that is throwing rocks at buses at night. They know the bus timetable, when the bus will go by, and they position themselves to throw these stones. On the night before last two buses had their windows broken. It was fortunate that a mother and baby seated at the back of the bus, while covered in shattered glass, were not hurt. I understand that these two buses were vandalised at Moana and Old Reynella. Drivers are concerned because not only do they have to drive the bus and look at what is happening inside the bus in terms of vandalism problems but now they have this additional hazard of looking out for these gangs. There is a worry that passengers in southern suburbs are becoming increasingly loath to use such services because of these practices.

Is the Minister aware of this problem, and is there some potential to work with police and senior officers of the STA and possibly with community youth groups to assess the principal trouble spots to see whether we can come up with a strategy that will, in the best interests of the STA and its drivers and, in particular, passengers, stop this practice?

The Hon. BARBARA WIESE: I am not aware of the specific problem to which the honourable member has drawn attention, but I am aware that recently there has been increasing vandalism of other kinds in the southern area. The State Transport Authority is working with its staff members and other relevant authorities to try to develop strategies that will deal with these problems that have recently emerged. I agree with the honourable member that the sort of thing she is talking about is totally unacceptable, and whatever we can do to wipe out that sort of behaviour must be done quickly. I think the way to do it is, as the honourable member suggests, to work with the police where possible but also to work with the community. A number of community organisations in the southern suburbs are working with young people, and I am sure that they can develop some strategies that will help to alleviate this problem.

CRIMINAL INJURIES COMPENSATION (MISCELLANEOUS) AMENDMENT BILL

In Committee.

Clause 1-'Short title.'

The Hon. K.T. GRIFFIN: I wish to raise a number of matters with the Attorney-General. During the second reading debate I indicated that only the day before I had received from the Attorney-General a copy of the report of the working party and that I may have a few more questions to ask in Committee. Rather than identify any particular clauses, I will raise the issues that have come to mind as a result of reading the report. On page 13 of the report, which refers to the police response to inquiries—this relates to the alleged delay in the criminal injuries compensation jurisdiction—it is stated:

> The committee is satisfied that the inability of the Police Department to make speedier responses to inquiries about offences has been a significant contributor to the present delays. Whilst the committee appreciates that certain steps have recently been taken which should improve matters in the future, it does appear that the relevant section of the department will need to be better provided with resources if a significant shortening of the time taken to respond to inquiries is to be achieved.

I ask the Attorney-General: have additional responses been provided; if not, what steps are proposed to enable police to overcome some of the difficulties which this report on delay indicates are contributing to the delay in dealing quickly with criminal injuries compensation claims?

The Hon. C.J. SUMNER: No additional resources have been put into this area; it is not considered necessary. The Assistant Crown Solicitor in the Crown Solicitor's Office, who deals with these claims, has indicated that in his view the response time from the police is adequate. In particular, when requests are made for urgent responses, the information is forthcoming from the police. While this was pointed to in the report as a problem, the present attitude of the Assistant Crown Solicitor is that it is not a large problem. If the three-month period of notice having to be given before proceedings are issued is introduced then the Assistant Crown Solicitor is convinced that a good number of cases will be able to be settled by getting this information within the three months and settling them without recourse to court proceedings.

The Hon. K.T. GRIFFIN: On page 16, under the heading 'Inadequate representation of the parties at mention hearings', the report states:

> The Crown is not always represented at mention hearings by persons having authority to resolve a matter in dispute. Similarly, applicants are by no means always adequately represented at mention hearings.

That side of it is not within the responsibility of the Attorney-General, but the Crown's representation is. Can the Attorney-General indicate what steps have been taken

The Crown is not always represented at mention hearings by persons having authority to resolve a matter in dispute. Similarly, applicants are by no means always adequately represented at mention hearings.

That side of it is not within the responsibility of the Attorney-General, but the Crown's representation is. Can the Attorney-General indicate what steps have been taken to overcome that particular problem highlighted by the working party?

The Hon. C.J. SUMNER: The law clerk who attends on these matters has now been given authority to settle matters, I think it is up to the limit of the jurisdiction, and has to do it in accordance with established precedents and has to have discussed them with the lawyer concerned in the Crown Solicitor's Office. However, I think this problem has been resolved by the granting of adequate delegations.

The Hon. K.T. GRIFFIN: On page 17, under the heading 'Inappropriate scale of costs', the report states:

The committee is satisfied that the present scale of costs in this jurisdiction is inappropriate and inadequate.

Then, later in the report, on page 30, it is stated:

The scale of costs contained in the regulations made pursuant to the Criminal Injuries Compensation Act 1978 should be substantially revised. The committee has agreed that the present scale of costs is unsatisfactory in that it does not allow the average legal practitioner an average return for the work necessary to bring a claim for compensation in a proper manner.

Later the report states:

The scale of costs should be designed so as to encourage adequate and timely preparation. To do this is to promote prompt and proper negotiations and settlements. The committee accepts that approximately 50 per cent of the fees charged by legal practitioners is consumed by overheads.

I think that that is probably a very efficient legal firm. Certainly, a lot of the bigger legal firms have a much higher percentage of costs which go to overheads.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: It says 50 per cent in this report. I think it is a very efficient firm that can operate at 50 per cent overheads. The report goes on:

Furthermore, the scale contained in the regulations has not been revised since December 1988. The scale pays scant regard to the amount of work required in an individual case.

It further states:

The committee recommends expanding the scale of costs in two respects. Firstly, it recommends that the scale should provide for different charges for the lesser matters (where the amount awarded is $20 000 or under) by comparison with the more substantial matters (where the amount awarded is in excess of $20 000). Secondly, it proposes that the number of items in the scale should be increased in order to recognise, to some degree, the amount of work involved in each individual case.

The obvious question that arises from that is whether that is an issue that the Government has addressed and, if it has not addressed it, can the Attorney-General indicate when it will be addressed? If it has been addressed, what conclusions have been reached?

The Hon. C.J. SUMNER: The Government does not accept the scale of costs recommended by this committee as appropriate and will not agree to them. However, the question of whether costs should be increased will be looked at if the three-month period comes in. Obviously, some scale of costs will have to be developed in the event that cases are settled before formal proceedings are issued. So, the whole question of costs will be looked at in that context. However, we do not accept what is recommended by this committee.

The Hon. K.T. GRIFFIN: Do I take it, though, that the Attorney-General accepts that they have not been increased since 1988?

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: On the basis of a later discussion we will have during the Committee stage, where the Attorney-General is seeking to increase levies—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: The CPI increase for that period is about 25 per cent and I think some attention needs to be given to that, if only to take into account the inflationary costs.

The Hon. C.J. Sumner: How long is it since they have been increased?

The Hon. K.T. GRIFFIN: It says here since December 1988. In that period I think the CPI increase is probably about 25 per cent and probably the costs of running a practice have increased by much more than that. But, if these can be reviewed, I believe that will facilitate the handling and quick disposition of cases within this jurisdiction. I do not think the Attorney needs to respond to that any further. On page 18, the report states:

It is considered that in many cases the victim and his or her advisers are not informed as to whether or not criminal proceedings are pending. The question arises as to whether an applicant for compensation should be able to commence proceedings whilst criminal proceedings remain unresolved.

Can the Attorney-General indicate what may now be in place to ensure that the victim and his or her advisers are in fact informed whether or not criminal proceedings are pending?

The Hon. C.J. SUMNER: The police report is obtained and obviously the victim can be informed as to whether criminal proceedings are pending or in train by the Crown if a question of criminal injuries compensation comes up with the Crown Solicitor. However, of course, as a result of declaration of victims' rights, victims are entitled to be informed by police officers or by the Director of Public Prosecutions as to the status of the criminal proceedings. I understand that that does happen on request. I certainly hope that the declaration is being implemented.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I do not know where that evidence came from. We can look at it and follow it up, but I do not think we can have a situation where a claim for compensation can be commenced while criminal proceedings remain unresolved, unless we have a clear situation where you cannot find the alleged offender and the criminal injuries compensation claim proceeds, anyway. I will check what the reference to this was and what evidence there was for it. It is a qualified statement, because it says, 'It is considered that in many cases,' so we will certainly have to have a look at it. There is no question about the principle: victims do have a right to be informed and, as I understand it, are being informed. But if they are not, we will have to do something about it. So we will check.

As I recollect, what the report had to say was that frequently police officers' notes are in note form only in the file and are not transcribed. The report further states on page 29:

It is, however, apparent that police procedures are not geared to providing a quick response to a request for information. Police officers' reports on offences are neither transcribed nor computerised as a matter of course. The permanent record consists of the officers' notes, which obviously will not be as complete as would be a formal report dictated from those notes. Similar concerns arose in the committee which inquired into the delays in the committal process in 1991. Furthermore, it is apparent that the officers in the Police Department are required to do the same work twice if at separate times two requests are made for information relating to the same offence.

The duplication is a matter of concern. The fact that there has been an inability to have notes transcribed into a report form is of concern. Can the Attorney indicate what steps are being taken to remedy that matter referred to in the report?

The Hon. C.J. SUMNER: No, I cannot, except to say that victims contact officers have been established throughout the Police Department and, whether or not they have assisted to overcome this problem that has been identified, I cannot say. However, I shall be happy to have this paragraph and the honourable member's query about it referred specifically to the police for examination and reply in due course.

The Hon. K.T. GRIFFIN: The last matter on the report is at page 32, where it states:

The benefits to the Criminal Injuries Compensation Fund from the implementation of the foregoing recommendations are such that special funds should be provided to enable the records of the District Court in this division to be computerised.

The committee suggests that the monitoring of the implementation of its proposals will be essential in order to ensure the success of the program that has been recommended. The committee recommends that a grant of $50 000 would be appropriate in order to ensure that all of the necessary work would be able to be undertaken.

I understood that there was an extensive computerisation process in the courts, but this report is dated the middle of 1992, and it is somewhat surprising that these records do not appear to have been computerised. Perhaps the Attorney can indicate whether or not they have now been computerised and, if they have not been, can he indicate whether they will be and whether the committee's recommendation about the provision of resources to enable that to be done for the purpose of monitoring is likely to be acceded to?

The Hon. C.J. SUMNER: There is an overall computerisation for the Court Services Department of which the honourable member is aware. Indeed, one aspect of it received commendation recently and I gave a ministerial statement on the topic just a few weeks ago. On this matter, the computerisation of records relating to criminal injuries compensation would be in the plan somewhere, and I can check when that is likely to be completed, if it has not already been completed. A specific request was made to have some money allocated from the fund but the Government was not attracted to that (at least I wasn't) and I rejected that approach. I expect this matter to be dealt with in the normal funding of the Court Services Department, but I will get a response for the honourable member on where we are with the computerisation of these records.

Clause passed.

Clause 2-'Commencement.'

The Hon. K.T. GRIFFIN: Can the Attorney indicate when it is proposed to bring the legislation into operation?

The Hon. C.J. SUMNER: As soon as possible, but that is conditional on getting the administrative procedures set in place. Regulations have to be drawn up under this amendment. Once that happens, the Bill will be proclaimed.

The Hon. K.T. GRIFFIN: Altogether?

The Hon. C.J. SUMNER: It is currently envisaged that they will be proclaimed together.

Clause passed.

Clauses 3 and 4 passed.

Clause 5-'Application for compensation.'

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

Page 3, after line 13—Insert paragraph as follows:

(da) by inserting after subsection (9b) the following subsection:

(9c) Notwithstanding any other Act, no interest may be awarded by the court in respect of the whole or any part of the amount of any compensation ordered under this Act.

The amendment is designed to make clear that interest may not be awarded on amounts of compensation awarded in criminal injuries compensation matters. It should be noted that interest is not currently awarded, nor is there any suggestion that it should be awarded in these matters. The amendment is being moved as a precaution only.

The Hon. K.T. GRIFFIN: I have no difficulty with the amendment. That has always been the position, as the Attorney-General indicates, and I am prepared to indicate support for it.

Amendment carried.

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

Page 3, line 14—Leave out '$1 000' and insert '$500'.

My amendment relates to applications for compensation. We debated it in the second reading stage. The Attorney-General wants to increase the sum from $100 to $1 000. Subsequently, the CPI figures were made available to me for the period 1969 to 1992, and the figure of 547 per cent would translate to $647. I have maintained my position that $500 would be the appropriate minimum, and I have moved the amendment accordingly.

The Hon. C.J. SUMNER: The Government believes $1 000 is a reasonable minimum claim, given that taxpayers pay it in one form or another. It is not a scheme which is subject to usual insurance, as we know. It is an injury compensation scheme of last resort, that is, provided that if the complainant cannot get compensation from anywhere else, it comes from the taxpayers through the scheme. So, I would oppose the amendment, which will limit calls on the scheme, and I think it is not too far away from what was envisaged when the Bill was introduced in 1969.

The Hon. I. GILFILLAN: I oppose the amendment. I believe that there is another principle other than just the CPI indexing of the figure, and I think that there is a good argument to have the start-off ledge at a level that would deal with the more substantial need for compensation and not be tied up with what might be

called the more trivial. So, for that reason—not the persuasion of indexing—I believe the figure of $1 000 is reasonable.

The Hon. K.T. GRIFFIN: I will not divide if I lose it on the voices. I ask the Attorney-General, since I raised the issue, whether he has had an opportunity to check how many claims fall within that category. He did say that under $1 000 there were about 40. Can he indicate, within the last year or the last period for which figures are available, how many there are up to the $500 category and the $500 to $1 000 category?

The Hon. C.J. SUMNER: I am advised that in the last financial year there were 43 such claims under $1 000 and this financial year it is already 48. We do not have any details splitting them between $500 and $1 000. That would have to be done manually, and I do not imagine the honourable member would want us to do that.

The Hon. K.T. GRIFFIN: The only other point is that the principal Act relates the limit to a court making an order for compensation. Can I take it that if the amendment is passed that will not mean that in some cases where there is an *ex gratia* payment for certain expenses to a victim without compensation the Attorney-General will not automatically rule out consideration of those because they might be less than $1 000?

The Hon. C.J. SUMNER: The wording of the present Act is 'an *ex gratia* payment not exceeding the limits prescribed by this Act'. Whether that means the maximum limit or not I do not know, but I think the honourable member makes the point that an *ex gratia* payment should be at large up to the maximum of $50 000.

The Hon. K.T. Griffin: No, there is a power for the Attorney-General in necessitous circumstances, I think.

The Hon. C.J. SUMNER: That is for an interim payment. That would not be affected by the amendment. In other words, an interim payment of less than $1 000 could be made but presumably at the point of making the interim payment we would have to be satisfied that the total of the claim was going to exceed $1 000.

The Hon. K.T. GRIFFIN: I acknowledge that the necessitous circumstances relates to interim payments. There is provision for such other *ex gratia* payments in section 11(3)(d), which provides:

> ...not exceeding in any particular case the limits prescribed by this Act in relation to an order for compensation as the Attorney-General considers necessary and consistent with the objects and policy of that Act to compensate harm resulting from criminal conduct or conduct of the kind described above.

As I understand it there have been a few occasions where a payment has been made even though a claim may not have formally been litigated through the courts, and in those circumstances it would seem to me that 'not exceeding the limits' means the $50 000.

There is no minimum in exercising that power which, I admit, is only in limited circumstances. Does the Attorney-General have the view that the minimum will hereafter be $1 000 or will he still exercise some flexible approach? I know it is only a limited number of cases.

The Hon. C.J. SUMNER: I guess it is a matter of interpretation as to whether or not 'exceeding in any particular case the limits prescribed by this Act' applies to the lower and maximum limit and the minimum amount of the claim. If the honourable member so desires, we can certainly look at that. I take it the position he is putting is that when you get to *ex gratia* payments the capacity to make those should be at large. I am not really sure about that.

The Hon. K.T. GRIFFIN: Can you think about it?

The Hon. C.J. SUMNER: I think I would prefer to leave it as it is and, if an Attorney-General is confronted with it at some point, with a claim possibly for less than $1 000, it can be dealt with at the time. Certainly, *ex gratia* payments are there to enable greater flexibility to exist within the Act and to deal with the hard cases which do not technically always fit within the circumstances of the legislation. I am not sure that I want to see a situation where we do away with the wording of the Act. I guess if there was a deserving case some way would be found to make the compensation payment. Parliamentary Counsel advises that in his view (and I think it is probably subject to debate) the reference to the limits refers to the upper limits, in which case there is an at large discretion on the Attorney-General to make an *ex gratia* payment. Such a payment of less than $1 000 could be made, but I think the circumstances in which that would occur would be very exceptional.

Amendment negatived clause as amended passed.

Clause 6—'Insertion of s. 10a.'

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

> Page 4, lines 4 and 5—Leave out 'in proceedings under this Act by any person nominated by the Attorney-General' and insert 'by any person nominated by the Attorney-General in preliminary or interlocutory proceedings under this Act or at a hearing for an order under this Act to be made by consent'.

I was concerned that it was not possible for the Attorney-General to be represented by law clerks in the courts on the final hearings of matters. The problem which the Attorney-General wanted to address by his amendment in the Bill was some question about law clerks not having the necessary power to attend preliminary or interlocutory proceedings, so my amendment deals with that issue specifically rather than leaving the at-large power which, I suggest, goes beyond what he was seeking to address.

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

Amendment carried; clause as amended passed.

Clause 7—'Payment of compensation, etc., by the Attorney-General.'

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

> Page 4, after line 19—insert:
>
> (v) the applicant would, in the Attorney-General's opinion, probably have been awarded compensation under this Act if the offence had been committed in this State;
>
> (vi) the applicant is, in the Attorney-General's opinion, in necessitous circumstances.

I expressed some concern about the payment out of the Criminal Injuries Compensation Fund of amounts which were contributed in relation to injuries arising in South Australia. The Attorney-General in his reply gave one example of a Victorian woman who was injured in France and spent $14 000 seeking to recover compensation in that country. He believed that some flexibility ought to be allowed to pay out compensation to a South Australian injured outside South Australia.

I have some concern about it. I am not unsympathetic to the South Australian who might be injured overseas,

example of a Victorian woman who was injured in France and spent $14 000 seeking to recover compensation in that country. He believed that some flexibility ought to be allowed to pay out compensation to a South Australian injured outside South Australia.

I have some concern about it. I am not unsympathetic to the South Australian who might be injured overseas, and I am not unmindful of the view that there ought to be some reciprocal arrangements between States and nations. But I do have a concern that our fund might be used to deal with issues that are essentially outside our jurisdiction. I was at one stage tempted to seek to remove the provision from the Bill, but I am persuaded that something ought to stay there. What I am seeking to do is move two additional paragraphs which would qualify the power of the Attorney-General to make an ex *gratia* payment.

One is to ensure that the applicant would in the Attorney-General's opinion probably have been awarded compensation under this Act if the offence had been committed in this State. So, that puts it on all fours with what happened in South Australia. It would be an untenable position if a person was a victim overseas and was able to recover in circumstances where the particular crime was not one of those for which a victim was compensated in South Australia and for which that person would otherwise have been unable to receive compensation if the facts were applied under South Australian law. I would like to see that limitation put on it.

The second is that I can envisage that there may be some necessitous circumstances where this may be appropriate. I suggest an additional paragraph that the applicant is, in the Attorney-General's opinion, in necessitous circumstances, which I think then means that it is used in fewer cases but in circumstances where there is a real need for the compensation to be paid here. So, I move that amendment.

The Hon. C.J. SUMNER: Accepted.

Amendment carried; clause as amended passed.

Clause 8—'Imposition of levy.'

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

Page 4, line 22—Leave out paragraph (a).

Line 23—Leave out "$40" and insert "$25".

Line 24—Leave out "$60" and insert "$40".

Line 26—Leave out "$20" and insert "$15".

This is now the really contentious issue of the levy. The levies in the Bill are sought to be increased: expiated offences from $5 up to $10; summary offences $20 up to $40; indictable offences $30 up to $60; and offences by children from $10 to $20—in other words, doubling the amounts. As I said at the second reading stage, the Liberal Party was not supporting any increase in the levy on expiable offences, very largely because a substantial increase in the revenue from expiable offences as a result of the increased use of speed cameras has been received.

Whilst the Attorney-General will argue that the taxpayers of South Australia in general will bear any deficit in the fund, I would suggest that that is not a plausible argument when one considers that there is a substantial increase in the revenue from speed cameras. According to the RAA, as I indicated during the second reading stage, in 1991-92 the estimated receipts in expiation fees were $14.7 million compared with $5.1 million in the previous year, so it was a quite dramatic increase, which does of course go into general revenue. However, quite obviously, in the whole scheme of things this is certainly available for the purposes of this fund, such as is necessary to be made up.

I indicated also that we would be prepared to increase the other levies, which are specifically on court proceedings, by the amount of the CPI. I was provided with figures from the Attorney-General's office in relation to the CPI, figures that I understand were prepared in Treasury, and I appreciate that information being made available. But being the sort of person that I am, I did my own checking. I acknowledge the correctness of the calculation in the CPI increase from 1969 to 1992. I had no difficulty with that: my figures came out exactly the same. But when it came to the other figures, from 1987 to 1992, from the September quarter 1987 to the December quarter 1992 my calculations show a 26 per cent increase, not, as Treasury was suggesting, 30.1 per cent. I do not know where it made the mistake, but I had the library do the checking for me, and I then checked it myself, and I was satisfied that it was 26 per cent. So, on that basis—

The Hon. I. Gilfillan interjecting:

The Hon. K.T. GRIFFIN: Constitutionally, other people will argue against that. It is the careful nature of the approach we take, Mr Acting Chairman. What I am moving is that there be no increase for expiation offences because of the dramatic increase in revenue from speed cameras, and I suspect also revenue from other offences; that summary offences be increased to $25 as my calculation suggests that that is very close to the mark—it is probably a dollar or so more than it should be, but $25 would round it off; and the indictable offences go up to $40—that in fact should be $37.80 but I am prepared to be generous and acknowledge that it is better to round them off to a multiple of five.

The Hon. I. Gilfillan: What percentage are you moving on?

The Hon. K.T. GRIFFIN: The figure of 26 per cent. The offences by children should be something like $12.60 but I have taken that to $15 to round it off. If there is a concern that I have been too generous in my calculation I am happy to reassess it, but it seems to me that that gives a little flexibility for the future; this will not be increased, I would hope, for some time. It also balances the $5 figure which will remain for expiated offences. So, I believe it is appropriate to move those amendments to clause 8, but vote on them separately.

The Hon. I. GILFILLAN: The Democrats are sympathetic to this amendment. I had not pondered on the actual exact figures until being walked through them by the Hon. Mr Griffin. If one is to be a purist in percentages and accepting the principle that is behind this levy, then a flat rate increase is probably justifiable right through each figure. However, I repeat that we have serious misgivings about the concept that criminal compensation should be funded by a levy on the general category of people who have offended or have been caught for offences where they are liable to pay an expiation fee.

The Hon. C.J. Sumner: What is your problem with the concept?

Portrush Road. They are no more responsible for the compensation than the Attorney is.

The Hon. C.J. Sumner: They have committed an offence, though.

The Hon. I. GILFILLAN: Yes, but the fact that you have a chauffeur driven car means you will never get pinged with that, so you will never have the privilege of contributing to it.

The Hon. C.J. Sumner: I actually do not use my chauffeur driven car all the time, you will be interested to know.

The Hon. I. GILFILLAN: In that case, the Attorney-General does expose himself to the hazard of contributing to this fund, but probably he drives very cautiously well below the speed limit on the basis that he does not want to contribute to this fund personally. The principle is a sound one and I argued it in the second reading speech, and I will not be drawn into it again. However, if there is to be a campaign which says that where there is an increase in compensation payments the way to fund that is to increase the levies or the amount of money extracted from offenders in the general classification and not those specifically related to that offence, I reject that, and I believe that it is wrong in its moral approach. I do not want to argue that issue now.

The matter that we have before us is that the Act has, in its structure, already accepted that there will be a contribution to the fund as a levy on penalties. The rise indicated in the Bill is excessive. I am personally not persuaded that, if we are being objective about it, there should not be a rise in the expiation fee from, say, $5 to $6, and being pedantic about it, I would say the rise in paragraph (d) of $10 to $15 is, by my sums, a 50 per cent rise.

The Hon. K. T. Griffin interjecting:

The Hon. I. GILFILLAN: Yes, $12.60. However, I do not think I would hold back on my reaction to the amendment on the niceties of the sums. I also think there is an argument that, if we are going to lift them, they can lift through the exact CPI because, as the Hon. Mr Griffin said, and I believe, what they go to should be fair and on parity for at least 12 months, maybe even longer.

So, I find the figures in the amendment acceptable. They would not be exactly the ones that I put forward, because, as I say, I would accept an increase of $1 on the expiation from $5 to $6, if we are working on the principle, because it does not really matter to me whether there are more expiable offences that are being collected. I see that again as an irrelevant argument. Essentially I support the amendment. If the Committee wants to look with more particularity at the exact amounts then I would be prepared to think about some variation.

The Hon. C.J. SUMNER: I am disappointed at this approach by the Opposition and Democrats, but I will not repeat the philosophical debate about the topic. If Mr Gilfillan has a philosophical objection to the whole approach, I have to acknowledge that, although I find his logic to be somewhat tortuous. However, I understand the Liberal Opposition does not disagree with the concept, and in those circumstances I would have thought that it would be prepared to support increases to the levy sufficient to replenish the fund. It is evident it will not do so. It is having two bob each way so that to some extent—

The Hon. I. Gilfillan: There might be some different sums done when they have control of the Treasury benches.

The Hon. C.J. SUMNER: If they do, but I am quite happy to inform the Council that that is certainly not a lay down misere.

The Hon. I. Gilfillan: I said 'if'.

The Hon. C.J. SUMNER: It is a pretty big 'if' I think. We will get Mr Keating over here to campaign for us and work the sorts of miracles he worked in the Federal election. That is really an aside and probably, by that time, he will be unpopular again and in the nature of things we will not want too many visits—

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: At the moment it would probably be a good thing to do, because his popularity is very high, but by the time the election comes, given the way politics operates, his popularity will probably be low again and it might be a question of whether he would be invited. I am sure he would be invited no matter what the circumstances, Mr Chairman. In case anyone gets the wrong idea, that was all by the way of an aside and a jocular one at that.

The Hon. I. Gilfillan: It is all on the record.

The Hon. C.J. SUMNER: I don't mind. The point is that it was in response to a totally irrelevant interjection by the Hon. Mr Gilfillan about whether or not the Liberal Party would be on the Treasury benches after the next State election. I suppose that anything is possible, but it is certainly not a lay down misere, and members opposite have a fight on their hands; I assure them of that. However, if they do, the honourable member is probably quite right; they will look at this matter again and we will probably see a Bill introduced to increase the levy, but that is for the future. What I am saying is that I am disappointed in the Liberal Party because it accepts the principle but is not prepared to accept it to the extent of replenishing the fund by agreeing to the amounts that the Government has proposed in this Bill. There is no point, as I said, in pursuing the conceptual or principle issue any more. I repeat that I think it is more equitable for offenders as a class to pay criminal injuries compensation than for the general taxpayer to do so.

What are the correct amounts, given that obviously the majority is not going to accept the Government's proposition? The Hon. Mr Gilfillan seems to have accepted the amendments of the Hon. Mr Griffin to reduce the amount of $40 proposed by the Government to $25; $60 to $40; and $20 to $15. I invite the Committee to consider increasing the levy on expiation fees as well, although I must do this without prejudice because the matter has to go before the House of Assembly. I ask the Hon. Mr Gilfillan whether he is prepared to accept an amendment to the Hon. Mr Griffin's amendment, which would increase the expiation levy to, say, $7?

The Hon. I. Gilfillan: The Attorney might not have picked up what I said when I discussed this matter, but if he would like to defer I will indicate what I support.

The Hon. C.J. SUMNER: I suggest that $7 would be more appropriate.

The Hon. I. GILFILLAN: If the Government wants to have the Democrats' support for variation of these

figures, I suggest that it be $6 for paragraph (a) and that paragraph (d) be reduced from $15 to $12.50.

The Hon. C.J. SUMNER: I am told that whole figures are needed, otherwise it gets messy.

The Hon. K.T. Griffin: What about $13?

The Hon. C.J. SUMNER: I think that is splitting hairs to an incredible extent. As I have said, the matter has to go to another place, and I do not know what view the Government will take when it gets there, but I propose that the figure be $15 where currently it is $10, and if the Hon. Mr Gilfillan is prepared to accept $6 I am grateful for small mercies at this stage. I move:

Page 4, line 22—Leave out $10 and insert $6.

I am moving what has been proposed by the Hon. Mr Gilfillan. There may need to be further negotiations about this, but at least this makes the matter somewhat more palatable to the Government.

The Hon. I. GILFILLAN: My view is that we should be consistent. It is not a question of small mercies. If it is argued that it is reasonable to raise these amounts in accordance with the CPI, that should apply right through. I intend to move that the amount in paragraph (d) be amended to $13, not $15. The Attorney advised me that we should have a whole dollar number. I thought that 25 per cent was the appropriate rule of thumb, so instead of $20 the amount should be $13.

The Hon. K.T. Griffin's amendment to line 22 negatived.

The Hon. C.J. Sumner's amendment to line 22 carried.

The Hon. K.T. Griffin's amendments to lines 23 and 24 carried.

The Hon. K.T. Griffin's amendments to line 23 and 24 carried.

The Hon. K.T. GRIFFIN: When I proposed my amendments I endeavoured to round them off to $5. I seek leave to move my amendment in an amended form to leave out $20 and insert $13 instead of $15. As there is now the precedent of moving away from multiples of five, that seems appropriate. I do not think it is a big issue with young offenders, but it would help if I moved my amendment in that amended form.

Leave granted.

The Hon. K.T. GRIFFIN: I move to amend my amendment to line 26 by striking out '$15' and inserting '$13'.

The CHAIRMAN: I understand that the Hon. Mr. Gilfillan indicated that he wanted to substitute $13 for $15. Does the honourable member withdraw that?

The Hon. I. GILFILLAN: Yes.

Amendment carried.

The CHAIRMAN: I point out to the Committee that clause 8 is a money clause and should be in erased type. Standing Order No. 298 provides that no question shall be put in Committee upon any such clause. A message transmitting the Bill to ' the House of Assembly is required to indicate that this clause is deemed necessary to the Bill.

Clause 9—'Delegation.'

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

Page 4, lines 30 and 31—Leave out 'a power or function conferred on the Attorney-General by this Act' and insert 'to a specified person, or the holder of a specified position, power to make a payment under section 11(3) to a person—

(a) by whom or on whose behalf notice of a proposed application has been given to the Crown Solicitor under this Act; and

(b) who would be likely to be awarded compensation under this Act'.

The Attorney-General indicated at the second reading stage that, in dealing with the settlement of cases before proceedings have been issued but after a notice has been given to the Crown, he would use the power given under the principal Act to make *ex gratia* payments. I said that, whilst all the payments made to victims are in a sense *ex gratia* payments—there is no claim as of right—nevertheless, it seemed to me that we ought to face up to the fact that there would be settlements in the first period after notice was given, and that those payments ought to be approved without going through the other provisions of the Act. So, the power to delegate, which is the power to make settlements in that area, is now more specific. It is a power of delegation to a specified person, or the holder of a specified position, to make a payment under section 11(3) in that period between notice and the proceedings being issued.

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

Amendment carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

[Sitting suspended from 4.25 to 5.5 p.m.]

LIMITATION OF ACTIONS (MISTAKE OF LAW OR FACT) AMENDMENT BILL

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Substitution of section 38.'

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

Page 1, lines 21 to 25—Leave out paragraphs (a) and (b) and insert 'within six years after the date of payment'.

I think it is a fairly clear issue where a person has paid money under a mistake, whether it is a mistake of law or a mistake of fact, and seeks to take action for recovery of that money paid. Then it is a question whether they should have a period of six years within which to take action or one year with no opportunity to extend that period. This limitation of one year and no power in the court to extend the period will also apply to moneys paid by way of a tax or a purported tax, so that if a law is held to be invalid or there has been a wrong calculation made in the tax and it has been paid a citizen may recover it, or seek to recover it, provided action is taken within 12 months of the date of payment.

I have argued at the second reading stage that 12 months is much too short and even more so when there is an express provision that the period cannot be extended. At the moment under the Limitation of Actions Act there is a discretion in the court to extend, in special circumstances, and I think that ought to remain, whatever the period. I think that the arguments that for one year and with no provision to extend there are therefore some windfall gains to be picked up is quite significantly overstating the case and that have little substance.

whatever the period. I think that the argument that for one year and with no provision to extend there are therefore some windfall gains to be picked up is quite significantly overstating the case and has little substance.

So far as the revenue is concerned, I think, as I said at the second reading stage, more and more we are moving to a position where Governments are not to be treated any differently from ordinary citizens or others in the community corporations—in respect of contractual and other responsibilities and one has to ask why the recovery of a tax paid under a mistake of fact or recovery of an amount paid under a purported tax should be so limited as prescribed in the Bill.

So, the choice is one year, no extension or, under my amendments, six years and power for the court to extend in special circumstances. I see no reason to change the present law which, I think, is generally accepted to be six years, although it is three years for personal injury claims. It has worked satisfactorily in the past and it may take some time for it to be established that there is a mistake. It may be that the party to whom the money is being paid is cheated or there has been a deception, and I think it would be grossly unjust for a person who has paid money and has been so deceived to be prevented from recovering if he or she has not discovered the deception within 12 months and is therefore precluded from recovering what the courts regard as an unjust enrichment in the hands of the person or body to whom the money has been paid. The choice therefore is clear, and for that reason I move the amendment. I believe it is equitable, fair and reasonable to everybody and in those circumstances urge support for it.

The Hon. C.J. SUMNER: The amendment is opposed. It basically negates the Bill. The amendment would reinstate a six year period of limitation for actions for recovery of moneys paid under a mistake of law or fact or pursuant to an invalid tax; that is, it would restore the present situation. In other words, if the amendment is passed there is no real need for the Bill. The Government has moved to change the existing limitation periods to provide a 12-month limitation period in these cases. As a result of the recent court decisions referred to in my second reading speech, recovery can now be made in situations not previously available.

There is also some uncertainty as to the principles to be applied to the recovery of taxes. It is important that businesses and the Government can assess their potential liability. A six year period is considered too long a period for such claims.

I would ask the Committee to listen to this next comment in particular, which is that a number of other States have already passed legislation to limit the recovery of invalid taxes. New South Wales, Victoria and Western Australia all have provisions which provide that no actions can be brought to recover from the Crown the amount of any tax, fee, charge or any other impost paid after the expiration of 12 months from the date of payment. In some instances these provisions have been in existence for many years. For example, the New South Wales legislation dates back to 1963. The Government is seeking to introduce a similar 12 month limitation for recovery of invalid taxes in this State, but in addition (and this is where we are adding to what has happened in other States) we are providing similar protection in respect of payments made under a mistake of law and a mistake of fact. In that respect, the Government was seeking to treat Government and business on an equal footing, but it may well be that that is something that has to be reviewed in the light of discussion.

The 12 month period is certainly considered to be reasonable in the case of taxes because, obviously, budgets have been framed and spent on the basis that a certain tax is valid. If, for any reason, the tax is subsequently held to be invalid recovery actions dating back some six years would obviously have quite a disastrous effect on State finances. For instance, if the State petrol tax was found to be invalid—I am not sure how much that raises in a year in South Australia, but say it is $40 million—$240 million would potentially be ripped out of the State finances. It is just not a tenable situation, and what would happen in those circumstances obviously is that you would have to come in and introduce legislation like this, or the Commonwealth Government would, if the tax was found to be invalid, to stop this occurring.

Another important point worth noting in this respect is that, when looking at the issue of taxes, if we are talking about that sort of tax (the franchise fee tax), the pricing of those products (petrol, liquor etc.) will have been set on the basis of taxes paid. Where a tax is held to be invalid and the tax has been passed on to consumers, it would be the payer of the tax (that is, the business) that would recover the tax and not the consumer. The recovery then would be a windfall for the business at the expense of people in the State who would have paid more for the product and suffered the tax shortfall.

So, it is a bizarre proposition, really, if that were ever to happen. Obviously, the shorter the period of limitation, the greater the certainty there is, as the Government is not exposed to potential liability over a long period of time. If the liquor franchise fee were found to be invalid, you would have a situation where action for recovery could be taken by the petrol companies. If there were no limitation, they could go back six years. For example, if it was $40 million, then they could sue for $240 million. They would not give the money back to the consumers, because they could not go back and give back the money to all the consumers who have been—

The Hon. I. Gilfillan: They would probably lower their prices for six months as a gesture of goodwill.

The Hon. C.J. SUMNER: Oh yes. The Hon. Mr Gilfillan is being flippantly cynical in the late afternoon. He is sure the petrol companies would lower their price for a period. He might be right: I do not know. Obviously, it would be a pretty untenable position for the petrol companies to be in if that occurred, and that is why I said that if something like that happened the matter would need to be addressed. I merely put the position in its starkest light, and the fact is—

The Hon. K.T. Griffin: The same applies to the Government, does it not? That's the chain.

The Hon. C.J. SUMNER: Sure, but in those circumstances the taxpayers and the consumers would lose and the person who paid the tax, the business, would have a windfall. That is not a tenable situation.

the Attorney-General. As far as relevant timing goes, the 12 months that relates to this, by the time it is proclaimed, will go well past the next State election, and it may well be a new ball game by then. What may be of interest is my question regarding paragraph (b) of the new section 38, which provides:

... if the payment was made more than six months before the commencement of [this Act], the limitation period that would have applied to the action if that Act had not been enacted, or within six months after the commencement of that Act (whichever expires first).

That is the restraint on actions for recovery of money. Why should it be restricted to the six months? It seems to me that it is a little niggardly to restrict it, if you are allowing 12 months for the other period of recovery. Why chop this back to six months?

The Hon. C.J. SUMNER: In fact, this does mean that people in that traditional period can go back 12 months: six months before the commencement of the Act and six months after. That is what it was designed to do, anyhow.

The Hon. K.T. GRIFFIN: I can understand the Attorney-General's argument in relation to the revenue. It is a relevant consideration, and it may be that that has persuaded the Hon. Mr Gilfillan and blinded him to the fact that there is another aspect to this, that is, in relation to relationships between citizen and citizen, because this not only applies to the issue of the revenue, where it may be argued that there are distinctions that can be drawn, although I am not these days convinced of that. However, if that is arguable at least there is a difference with relationships between citizens in the private sector.

It does not apply just to business, although it is likely to apply mostly to business, and it does not apply only to corporations. It applies equally to individuals. You may have, for example, a tenant who, under a mistake, pays more rent or makes a greater—

The Hon. C.J. Sumner: Under a mistake of fact.

The Hon. K.T. GRIFFIN: It may be a mistake of fact.

The Hon. C.J. Sumner: That is what it used to be. They could not get anything back before under a mistake of law.

The Hon. K.T. GRIFFIN: No, I know, but the High Court has held that they can. All right, you are regarding that as a windfall gain. It depends how you describe a windfall gain, but they could have made a payment of rent or some other payment. It may be that they mistakenly believed that they had to pay for some aspect of the premises, such as to replace the stove and, if they did not wake up to that within 12 months, they are dead and gone and they cannot recover it under the Attorney-General's legislation.

But at the moment, if they had paid it under a mistake of fact, and now as a result of the High Court decision under a mistake of law, they have much longer than 12 months to seek to recover. If in 18 months time they were to become aware, perhaps through a tenants meeting or some other mechanism, that they could recover this because they had paid it under a mistake, it seems to me that they ought to be enabled to do that. I wonder whether either the Attorney-General or the Hon. Mr Gilfillan or both, if the issue is lost in relation to the revenue, would be prepared to consider distinguishing between the revenue, on the one hand, and other transactions that are not related to the issue of the revenue for a longer period of time.

It seems to me that that is fair. It may be argued that in some instances Governments deceive. It may be that there is a wrong calculation in a whole swag of rate notices and that is not discovered for some time, but where one is dealing with transactions between citizens or, apart from the revenue, transactions between Government and citizen or citizen and corporation, it seems to me that there ought to be a more flexible approach to the period within which recovery can be made, because it may be that there is a deception, as I said when I spoke in support of my amendment. It may be that a person has been cheated and in those circumstances the cheat will escape.

The Hon. C.J. Sumner: No, that will not happen.

The Hon. K.T. GRIFFIN: It will, because if there is a deception that results in a payment being made which is a payment by way of mistake—

The Hon. I. Gilfillan: Can't a person still be charged with an offence?

The Hon. K.T. GRIFFIN: It is not a question of being charged with an offence; it is a question of recovering the money.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: It may not be misrepresentation. I acknowledge that part of it could be. It seems to me that, by restricting the period to one year absolutely, there is a potential for injustice, citizen to citizen, citizen to corporation, Government to citizen, putting aside the revenue aspect of it. So, what I am asking the Attorney-General to consider, in the light of the fact that I am obviously going to lose my amendment in relation to both matters, is whether it might be possible to separate the two so that we treat the civil area in a different manner from the revenue side, so that the civil side has flexibility. That is what I am anxious to see. It may be that we can do that without too many difficulties, and reluctantly I would be prepared to accept that sort of compromise.

The Hon. I. GILFILLAN: In more or less continuing the discussion rather than making a definitive statement about the matter, I can say that there does seem to be an enormous disparity between the one year and six year period that the amendment contains. Certainly, as a non-lawyer and one who is not experienced in it, there may be argument for some compromise or adjustment for both positions, but I really just wanted to make that statement as a comment to the Committee rather than a definitive position from my point of view.

The CHAIRMAN: I draw to the attention of the Committee that in line 23 after 'amendment Act 1993' there is a clerical correction and we will be inserting the word 'within' at that point.

The Hon. C.J. SUMNER: As I understand the position in the Committee, there is consensus, or at least the numbers, in relation to the 12 months on the tax problem. The Hon. Mr Griffin has now raised problems in the non-State revenue area, and I propose that, on the basis that that policy issue is agreed, I will look at the arguments raised by the Hon. Mr Griffin again and perhaps revisit it tomorrow, if that is acceptable to the Committee.

The Hon. K.T. GRIFFIN: I would appreciate that because this is an important issue. The Hon. Mr Gilfillan has made the observation that six years back to one year is a significant restriction on rights, and because it is such a significant issue and it will affect the whole commercial fabric of South Australia and consumer relationships with providers, I think it is an issue that does need to be addressed. It is not just a business issue, but it is a consumer issue and a commercial issue, and I think that there would be value in accepting what the Attorney-General is suggesting: that he examine the matter again in the light of the discussions so far, and we take up the matter again tomorrow.

Progress reported; Committee to sit again.

The Hon. K.T. GRIFFIN: Mr President, I draw your attention to the state of the Council.

A quorum having been formed:

MUTUAL RECOGNITION (SOUTH AUSTRALIA) BILL

Adjourned debate on second reading.

(Continued from 21 April. Page 1985.)

The Hon. PETER DUNN: In responding to this Bill there are a few things I wish to say and they refer to the trade in food. I think the rest of it has been well canvassed by the Hon. Trevor Griffin, but I do want to make some comments about what is happening in the food line. It is interesting to note that the South Australian Farmers Federation has put forward a few concerns, along with a group called the Food Policy Alliance. It sounds a rather way-out group, but I understand it is a loose group of people who are retailers of food. I am concerned about consumers and the effect that this will have, because we can have a problem occurring if the lowest common denominator is used and then spread around the Commonwealth. I agree with mutual recognition because we must free up trade between States. We must free up trade not only within Australia but also without Australia. There is going to be a freeing up of trade under the GATT agreement. That trade is both ways and we must remember that. There will be imports as well as exports, and when imports come in we need a set of standards. Several things are needed. There is a need for truth in labelling, a need for food standards, a need for food inspection services, and a need for quantity and quality standard assurances.

The South Australian Farmers Federation has said that it accepts the concept of mutual recognition where it will aid the free flow of trade between States, but believes that the uniform national minimum standards as applied to food and other areas such as education and training should take precedence over mutual recognition. I suppose they are opposites, but I think we can legislate for all those problems. There is an argument for the adoption of world standards in respect of food stuffs. It is interesting to note that Scandinavian countries do not adopt the lowest standard or a standard for one area. In the past, dried fruits have been imported into Australia from a number of countries such as Turkey, Greece, America and South America, and some of those products have been imported at a much lower rate because those countries have a lower labour cost. However, when looked at carefully often it is found that the quality of fruit imported into Australia, particularly dried fruit, or orange juice concentrate, which has been particularly predominant in the news of latter years, is quite substandard.

If we adopt the principle of mutual recognition and introduce dried fruits into, say, the Northern Territory, it is likely that that product will go to every State of Australia, purely because we have passed this legislation. However, Scandinavian countries use a different method to determine the standard of a product. Those countries indicate that they will use the highest practical standard, and I think that is a good and reasonable idea. It may mean that the consumers will pay a little more, but they will be assured that the product they are getting is of a very high standard. If South Australia adopts mutual recognition, this could lead to the bidding down of standards—and that would worry me. Australia recognises that at the moment standards are not too dissimilar between the States, but this could lead to the bidding down of standards. Therefore, goods imported into this country would come through the State which has the lowest standard—something that I do not think we should condone.

The Food Policy Alliance Group makes some important observations. It supports the aim but opposes the method, and states:

> The intention behind this legislation needs to be supported but the approach of accepting mutual recognition needs to be opposed unless it is accompanied by a clear mechanism of establishing uniform and/or minimum national standards or regulations in appropriate areas.

So, that group is on the same theme. It defines clearly a three tier system of standards, and states:

> All standards and regulations are not of equal importance. Some, such as those involving transport, communications and public health are vital; others such as the shape of food containers are trivial. Rather than simply accepting mutual recognition of standards with the potential problems outlined, a more discriminating approach would recognise the need for—
>
> * areas where uniform national standards need to be set;
> * areas where it is essential to establish minimum standards but where uniformity is not essential;
> * areas where diversity is of little consequence and where mutual recognition can cut through barriers to trade.

I could cite examples of those, but I will not because that may take longer than simply describing them. Everyone in their own mind could think of cases in those three areas. The Food Policy Alliance goes on to say that it is clearly essential that there are uniform national standards for transport, communication and food stuffs, particularly for pollution controls, public health and occupations such as doctors, nurses, pest control operators and plumbing and sewerage workers. It has identified a few of the areas in which it believes standards ought to be set. It states:

> Such standards and regulations need to be arrived at by careful evaluation of scientific evidence and public consultation.

I do not wish to say much more. It can be seen that if we have this bidding down of standards—which may happen if we adopt mutual recognition—if we have a State that requires a lower standard than another State, it is likely that that State will get the imports and there may

I do not wish to say much more. It can be seen that if we have this bidding down of standards—which may happen if we adopt mutual recognition—if we have a State that requires a lower standard than another State, it is likely that that State will get the imports and there may be States such as ours, which are in a weak financial state and which would opt for that road—and that would be sad. I think we should head more towards the Scandinavian model and use the highest practical standards.

We are a Commonwealth. We have these artificial barriers between us in the form of States. The Commonwealth legislation recognises under section 92 that we can trade freely between the States, but this legislation puts it in a more practical form. If there is the freeing up of trade, so much the better. We do not seem to use those barriers very much. The only time of any consequence that I can recall when they were used was during the war when travel across the borders was not permitted, but today one can travel freely, and trade should be likewise. For those reasons I will support the legislation if the amendments proposed by the Hon. Mr Griffin are carried; otherwise we may have to look at it in a new light.

The Hon. M.J. ELLIOTT: I do not intend to speak to this legislation at great length. The matter is being handled for the Democrats by the Hon. Mr Gilfillan, but my interest in this piece of legislation was first raised following contact from members of the teaching profession who expressed grave reservations that this legislation had the potential to undermine what is an extremely good teachers registration system operating in this State. I guess we can look at that issue in more detail in Committee. At this stage, I will simply flag that there is one profession that has raised concerns with me relating to this legislation.

Following their contact with me I looked at the Bill and at the report of the Committee on Regulatory Reform to Heads of Government, and I noted issues not only regarding professions but other matters as well. As I said before, we will have a chance to look at these matters more exhaustively in Committee, but I ended up with reservations that do not cover only the question of occupations, registration and recognition of qualifications, etc., but its impact on goods. I note that some of those matters were raised by the Hon. Mr Dunn in his contribution. It worries me that in relation to goods we will end up with a lowest common denominator effect where a State which adopts effectively a low standard will set the standard for everyone. That can apply in relation to goods produced domestically or to goods that are imported.

Let us just take one example. In South Australia, we have a very high standard local product in terms of apricots. We have some very tight laws in relation to their production. Imported apricots quite often are treated in different ways. For instance, the fruit is allowed to fall to the ground before being collected, it is packaged and quite often carries dirt with it. Laws in relation to sprays and so on also may be different. If South Australia decides that it wishes to set a standard of quality for foodstuffs, we may be denied that opportunity if another State decides that it is willing to accept whatever comes. We could have low quality produce being allowed in by one State and that standard being enforced on all States.

In relation to standards, even in terms of that which is produced within Australia, some time ago Tasmania introduced legislation dealing with additives in margarine. That was challenged under section 92 of the Constitution, but upheld by the High Court of Australia on the basis that a State was able to set food standards as long as the prime purpose of that standard was not to interfere with interstate trade. It seems to me that this mutual recognition legislation might in fact say that a State cannot do that; that a State cannot set about prescribing a standard for food, because whatever is acceptable in one State must be acceptable in all States. So there, just in relation to foodstuffs, we have an example of where the lowest common denominator is acceptable.

It has been suggested to me that if all States ban something and then one State allows it then all States will have to accept it. A recent example of that is that South Australia became the first State to allow the consumption of kangaroo meat. I pass no judgement on whether or not that is a good or a bad thing at this stage, but for the purpose of the debate, if the Mutual Recognition Bill is in place, once one State decides that kangaroo meat is allowed, all States have to accept it. That means that as soon as one State changes its law that change in the law affects every other State. To me that is quite bizarre.

I note that there is an intention for some existing laws to be exempted. One exemption, which I understand in the short term, at least, will be allowed to stand, is the law in relation to beverage containers. These exemptions, as I understand it, can only be granted if all States agree. If that is the case, if the Mutual Recognition Bill had existed, say, 30 years ago, before beverage container legislation was introduced in South Australia, my suspicion is that our State would never have been able to introduce it, because effectively we are trying to enforce a standard that the other States will not accept.

The bottom line is that the Government is saying that we are trying to free up interstate trade. I believe the bottom line is, in fact, that we are removing the democratic rights of communities to make decisions about what is acceptable to them. The South Australian community is not an identical community to all others. Some people might want it to be so, but it is not. I must say that for many years people looked at the Queensland community and said, 'Thank God for that.' We in South Australia set different standards in relation to foods, bottle deposits and so on. There is a host of laws that we decided to have which were different, and about which we have been proud.

Under mutual recognition the potential to be different is reduced. I would have thought that in democratic societies we would be attempting to empower people when, in fact, mutual recognition disempowers people. Just as we disempower the community of South Australia and force it to be like the community of Australia, Australia itself, by way of various treaties, is giving up its ability to make national laws. It is backing away from all sorts of laws, whether they be industrial laws or anything else, because it is trying to fit into the international community. Who sets the law at the end of

We are disempowering the community at the national level and at the State level. As I said, we are really going to the lowest common denominator and to me that is not acceptable. There was an interesting debate on radio this morning and I notice in the print media recently which noted that Australia's standard of living is higher than Japan's. It notes that standard of living is not just a factor of economics alone. Standard of living is a compound of many factors.

Essentially, what this Bill is doing is accepting that economics alone is the sole determinant of one's standard of living. That is a grave mistake and one that the economic rationalists Australia-wide and worldwide continue to make. In South Australia, certainly, our economy needs a boost and certainly we need to do things. However, I am not convinced that this Mutual Recognition Bill at its crudest level is the way to go. That does not mean that I disagree with an attempt to establish standards wherever possible, but it should be on the basis of consent and it should be done on an industry by industry basis.

I am sure there are ways to do it other than passing a law that is essentially all encompassing and saying, 'We give up our sovereignty, our ability to make law, in these areas.' That is certainly the way this Bill looks to me. Of course, we will have a chance to explore the issues in much greater detail in Committee. This has been only a brief contribution, but I express grave concern about this legislation. I must say that if my understanding of the legislation is correct I would hope that it fails.

The Hon. C.J. SUMNER (Attorney-General): If the legislation fails, as apparently the Hon. Mr Elliott wants it to do, South Australia will be on its own. Every other State in Australia will have addressed it.

The Hon. K.T. Griffin: Not Western Australia.

The Hon. C.J. SUMNER: But they will. It is astonishing. It emerged out of an unusual bipartisan approach to try to get the Australian economy moving and to see issues in a national way. It was a bipartisan approach which was initiated in the then Liberal State of New South Wales under Mr Greiner and which was supported by the national Labor Government then under Mr Hawke. I actually think it is one of the most important initiatives that this Parliament has had to consider in a good number of years.

First, let me again outline the background to the legislative approach used in this Bill. Clearly, the Hon. Mr Griffin has some concerns about placing responsibility for amendment to the substantive law with the Executive arm of Government and not the Parliament of the State.

In deciding on the approach to pursue, various options were considered by heads of Government, when they made this decision. These were, first, Commonwealth enacting legislation specifying the requirements of mutual recognition. The advantage of this approach is that it makes any State laws which are contrary to the principles of mutual recognition invalid by force of section 109 of the Constitution. The major disadvantage of this option is the uncertainty as to the powers of the Commonwealth, which could be used by vested interests seeking to undermine mutual recognition.

The next option was enactment by each jurisdiction of complementary legislation, either adopting another State's legislation (adoptive complementary), or enacting identical legislation in each jurisdiction (mirror complementary). The potential for differences to develop between States and Territories means that the complementary options could prove less durable and robust than the limited reference of powers option adopted. The third option was a limited reference of powers, the approach agreed to by heads of Government—the one incorporated in this Bill.

The approach adopted for the operation of mutual recognition was taken to ensure complete consistency across Australia, encompassing all States and Territories. In the past, some States have used regulatory requirements to protect their industries or practitioners from competition. This has not been in the interests of the national economy. The Mutual Recognition (South Australia) Bill does not provide for the transfer of power to the Parliament with the lower standards, but rather recognises the standards and regulations already in place in another jurisdiction.

There was reference by the Hon. Mr Griffin to the need to maintain control of the agenda at all times. The approach adopted by the Victorian Parliament was cited as a means of achieving this. The Victorian Attorney-General had advised that her Government 'is adopting the Commonwealth's mutual recognition legislation rather than referring power to the Commonwealth on the subject' *(Hansard* page 2818). However, the Victorian approach is consistent with that being proposed in South Australia, with two exceptions. These are that it requires any amendment to the Commonwealth Act to be referred to the Victorian Parliament for endorsement before the effect of that amendment can become operational in that State, and that it limits the adoption of the Commonwealth Act to five years.

Provision of the requirement for any amendment to the Commonwealth Act to be referred to the Parliament for endorsement before the effect of that amendment can become operational was considered during drafting, but discounted. Such a provision would prove unwieldy, and would result in the Parliament having to approve what could be minor amendments. The South Australian approach is less cumbersome, through requiring such amendments to be approved by the designated person, that is, the Governor. Again, the inclusion of a legislative requirement to obtain the endorsement of the Parliament for continuance beyond five years is unnecessary. The South Australian Bill includes the provision for termination of the reference to the Commonwealth Act at any time following its operation for five years.

It was pointed out that while the legislation provides for termination after five years of operation, should that be required, no explicit review requirement was included. It was suggested in another place that it would be desirable for a review process to be required of this legislation, preferably through causing the Act to expire on the fifth anniversary of the day on which it commenced. The Government suggested that such a review process could be undertaken without requiring a re-enactment of the legislation, should the review find

that mutual recognition is operating effectively. I will be moving an amendment which achieves that objective.

Regardless of the final wording in this Bill, it is an essential piece of legislation which will produce benefits to the State. It will confirm that South Australia is part of the national and, indeed, world economy. It will open up markets for South Australian manufacturers and producers in other States. It will ensure that South Australia will attract those businesses and people with professional expertise necessary for us to further build the economy of this State.

The Government does not want South Australia to become a small outpost in economic terms, with its community not able to reap the same benefits achievable by other States. The Government does not want this State to become more insular at the very time that South Australia needs to be expanding its horizons for economic benefit.

I now turn to the matter of appeals. All occupational groups will have the right to appeal any decision of a local registering authority regarding the mutual recognition of their occupation. In order to maintain national consistency for occupations, heads of Governments agreed that the appeal body will be the Commonwealth Administrative Appeals Tribunal. Some concern was expressed as to the use of the Commonwealth Administrative Appeals Tribunal as the appeal mechanism in relation to occupational equivalence decisions.

I acknowledge that this is a quasi-legal tribunal, as indicated by the honourable member; however, other mechanisms were considered but discounted due to the need to retain consistency. The Commonwealth Administrative Appeals Tribunal will hear appeals against decisions of local registration authorities, and will have the power to declare an occupation to be non-equivalent. This would occur in situations where there is no technical equivalence, in the sense that the activities that a practitioner is authorised to carry out under registration in two different jurisdictions are not substantially the same. Such declarations may also be made where there is technical equivalence but where there are health, safety or pollution grounds for preventing practitioners from one State from carrying on that occupation in another State. These declarations would have effect for 12 months, during which time the relevant ministerial council would determine whether to develop and apply uniform standards.

Some members of the judiciary and the legal profession have asked that they be exempted from the appeal mechanism proposed on the grounds that it is not appropriate for an administrative tribunal to be the appeals body for decisions of a higher court, the Supreme Court being the admitting authority. The Chief Justice has argued that being admitted as a legal practitioner is a different qualification from other professions because legal practitioners are officers of the court and therefore involved in the administration of justice.

Heads of Government considered the provision of an exemption for members of the legal profession from this aspect of the operation of mutual recognition, but since that would provide a precedent for other professions and would undermine the principles of mutual recognition, the provision was not supported.

Sir Laurence Street, Chairman of the International Legal Services Advisory Committee, has indicated the strong support of that organisation for the concept of mutual recognition. He agreed with heads of Government that the creation of a national Australian legal profession and a single market for professional legal services is a worthwhile goal. This issue should not be allowed to impede the achievement of that goal.

I have several comments to make in response to comments about the impact on the teaching profession. First, the Hon. Mr Griffin correctly described the situation in regard to teachers. Mutual recognition principles will only apply between those States where the occupation is registered. However, heads of Government have asked Ministers of Vocation, Employment, Education and Training, etc., to make recommendations regarding regulation in all States.

The potential for 'wholesale deregulation of the teaching profession' was raised by the Hon. Mr Lucas, but that potential is just simply not there. The fact is that teachers are not registered in all States and, even if those States where registration occurs decided to deregulate the profession, South Australia would still have the option of retaining regulation, if the Government believes that it is in the best interests of the State.

I now turn to the impact on local industries. Concern has been expressed that commodities entering the State will not be required to meet the high standards required of local manufacturers or producers, thus putting them at a disadvantage in the marketplace. However, the bulk of standards which are applicable to industry are manufacturing or health/safety standards, which mutual recognition will not affect. This scheme will only apply to those goods for which point of sale standards are in place. Such point of sale standards are provided, however, by regulations under the Waterworks Act 1932 and the Trade Standards Act 1979, and the Government is already acting on these issues to ensure that industries are not disadvantaged.

The unique qualities of the local water supply require a particular grade of plumbing fittings, at present regulated through point of sale. These requirements could be achieved by providing regulations on use rather than sale, thus ensuring they apply to all manufacturers whether located in South Australia or not. Consumer affairs agencies, through the Commonwealth-State Consumer Products Advisory Committee, are working towards the establishment of national standards for the majority of products regulated under the Trade Standards Act 1979. The dried fruits industry is another example, and I have already elaborated on the action initiated by South Australia to establish national standards.

It is the Government's view that concerns expressed by the Engineering Employers Association, which were cited in another place, and also referred to by the Hon. Mr Griffin, will not be realised. Some concerns have been expressed that countries will be able to import goods through the State with the lowest or non-existent standards for a particular item, and thereby gain access to the Australian market overall. This could create added competition for local manufacturers who are required to manufacture to higher standards in some instances.

Clearly, if the goods in question pose a risk to public health or safety, or environmental pollution, then mutual recognition will enable a temporary exemption to be applied while an appropriate national standard is developed. On the other hand, if the risks are not apparent but it is more a question of protecting the local industry only, then within Australia I believe competition should prevail and any restrictions on the import of goods is a matter that should be handled by the Commonwealth Government under tariff or other policies. It should be pointed out that freeing up trade within Australia is one of the goals of mutual recognition.

The Hon. I. Gilfillan: Are you rewriting history? You seem to be improving your text as you go.

The Hon. C.J. SUMNER: No, I am just adjusting it to reflect my views and not those of the officers. That is all right. I am allowed to do that.

The Hon. I. Gilfillan: You're adding your own individuality to it.

The Hon. C.J. SUMNER: That is right. The counter argument is that competition with cheap imports may cause a lowering of local standards with a consequent detrimental impact on the reputation of the local product on the local and export markets. However, regardless of the base standards, it should be possible for South Australian producers and manufacturers to maintain or establish a reputation for quality products at the same time as beginning to operate within a less restrictive market environment. Of course, mutual recognition will make it easier for manufacturers to gain access to markets in other States, since specific requirements of those other States will no longer have to be met. The relevant Government and industry organisations will monitor any impact and recommend appropriate actions to safeguard SA industries, particularly any area where they may be disadvantaged by being required to meet manufacturing or quality standards which are more onerous than those required in other States.

In relation to the consumer protection/lowest common denominator effect, there have been some concerns expressed that consumers in South Australia will not be assured of the levels of protection from unsafe products which they presently enjoy, and there will be a drift towards the 'lowest common denominator' standards. However, under mutual recognition consumers will have a wider choice of goods produced under a range of standards and have access to additional trade-offs between price and quality. Mutual recognition is based on the assumption that the differences in regulations between the States and Territories are not great. Indeed, there are already numerous areas where regulations have been, or are in the process of being, harmonised. This work is continuing, so the risk of any downward spiralling of standards is limited. I should say that as far as I am concerned I believe in the area of consumer laws because they do impact on the economy, they should be uniform throughout Australia, and the notion of different consumer standards in different States around Australia, in my view, is no longer tenable.

A national accreditation scheme has been developed for water well drillers who have been required to be licensed in South Australia since 1976. This approach will greatly enhance the protection of Australia's valuable groundwater resources, while providing well drillers with greater flexibility to extend well drilling activities and improve their employment opportunities. That is an example of where a national scheme has been developed.

Further, a Commonwealth-State Consumer Products Advisory Committee has been assessing a range of products which are regulated in some jurisdictions and not in others. The aim of this work is to ensure that national standards are established where these are seen to be necessary in the interests of consumers. So, it is possible that mutual recognition will have the effect, if you look at it on an Australia-wide basis, of increasing standards in areas in this country where those standards are too low if that is what is agreed to on a national basis by the responsible authorities, and that process will have to continue once this Bill passes through a whole range of consumer activities and occupational licensing areas.

Furthermore, the mutual recognition scheme has inbuilt safeguards, allowing temporary exemptions for goods to be declared to ensure that standards aimed at protecting health and safety and preventing environmental pollution are kept at an acceptable level. The result may be an elevation of standards in many instances, as I said. It just goes to show: great minds think alike. South Australia will retain the ability to impose such exemptions for up to 12 months. South Australia has a licensing system for some occupational groups which incorporates both the occupational licence (covered by mutual recognition) and the business licence, which is not covered by mutual recognition principles. Some changes to the licensing regime may be necessary to provide for a clearer distinction between the two licensing systems. A close watch on initiatives at the national level will ensure that the interests of South Australians are reflected in and consistent with the interests of all Australians.

There has been a considerable amount of discussion about food. I turn now to food quality standards. In the past, many standards in the food standards code were established on the basis of composition, for example, specifying the percentage of fat to be included in milk products, which could be considered a quality issue. A review by the Industries Assistance Commission in conjunction with the Business Regulation Review Office suggested that such standards should be deregulated. The National Food Authority supports this view.

Some concerns have been expressed that mutual recognition will permit the entry of low quality imports through the States with the lowest food standards or the weakest system for inspecting and enforcing compliance with such standards. Under the National Foods Standards Agreement (1991) standards relating to health and safety and composition of food are incorporated into the Australian Food Standards Code (the Code) and uniformly adopted into law by all State and Territory Governments.

Existing deviations to the code permit colouring of prawns, a different mercury standard for fish, human consumption of kangaroo meat and the addition of sulphur dioxide to mincemeat in South Australia. These are under review by the National Food Authority to ensure compliance with the agreement. Should mutual recognition be introduced before these aspects are

sulphur dioxide to mincemeat in South Australia. These are under review by the National Food Authority to ensure compliance with the agreement. Should mutual recognition be introduced before these aspects are resolved, these foods will be able to be legally sold in other States and Territories, even though they may be currently restricted for sale in those jurisdictions. Many food quality grading standards are not covered by the code, thereby providing for the application of mutual recognition principles in relation to those foods.

Dried fruits are such an example. Existing State regulations will be able to be circumvented by fruit imported from or through States which do not have equivalent regulations. The economic basis of this industry in South Australia is governed by a set of grade standards, as specified by the Commonwealth Department of Primary Industry, and trade export control (dried fruits) orders. Dried fruit is purchased from the grower, processed by the packing sheds, then sold to the consumer or industrial client, all with continual reference to the specified grade standards. The higher the standard, the higher the return to the grower. Under mutual recognition local producers will not enjoy the same non standards as importers, being required instead to meet the local standards which, in the case of dried fruits, are higher. South Australia has initiated steps to overcome this duality of standards for the dried fruits industry. At the request of the previous Premier, Ministers of Agriculture have initiated work to establish national quality standards. Negotiations between States are continuing on this matter, but indications are that agreement as to the standards to be adopted will be reached. So, we have a situation there where, as a result of mutual recognition and the impetus provided by it, national standards are being developed.

The food policy alliance, comprising farmer, consumer and trade union interests, is seeking changes to food policy at a national level, the core issue being the need for food policy based on quality. It has four campaign areas, namely, fair trade, truth in labelling, food standards, and food inspection/quality assurance. In relation to food standards, the alliance seeks equity in food production, since under mutual recognition local producers will not enjoy the same non standards as importers, being required instead to meet the local standards which, in many instances, are much higher in some States than others. An example, as already said, is the dried fruits industry, and as outlined previously this matter is being addressed.

While the alliance stated that it is not promoting protectionism, it would seem that this could be the end result if its approach was implemented for all foods. This would undoubtedly have the effect of pushing the price up for those food items produced locally and make it more difficult for importers to market their products here.

It could be argued that quality standards are a matter for control by market forces and that mutual recognition will give consumers a wider choice. These comments are made in response to the food policy alliance. The counter argument is that competition with cheap imports may cause lowering of local standards with a consequent detrimental impact on the reputation of the local product on local and export markets. Regardless of base standards, it should be possible for South Australian producers to maintain or establish a reputation for quality products, at the same time as beginning to operate within a less restrictive market environment. Market forces should be allowed to prevail in relation to quality issues.

In summary, due to uniform food safety standards and the level of free trade of food across Australia already, the impact of mutual recognition should be minimal. Indeed, it will produce advantages for consumers, producers and manufacturers and as such should be commended.

I will now provide details of several matters which were raised in another place. The Premier has already provided information to the Deputy Leader of the Opposition in regard to the impact on the plumbing industry, but I will reiterate his comments here for the benefit of members. As would be realised, mutual recognition principles will have an impact on goods and practitioners in this industry, and I will outline each of these separately. In relation to goods, the unique qualities of South Australia's water supply have already been acknowledged, and it particularly requires attention to be paid to the nature of plumbing fittings connected to it. For this reason, many of the standards imposed on plumbing goods by South Australia exceed those required by other jurisdictions. One example is the requirement for dezincification resistant brassware, a requirement instituted to prevent the rapid corrosion of brassware caused by the relatively high chlorine residual in the water supply.

At present this and other requirements relating to the type of fittings able to be connected to the water supply are regulated through point of sale regulations. With the introduction of mutual recognition principles, these regulations on the sale of such goods will be able to be circumvented by plumbing goods from other States or those imported through other States, while our local manufacturers will still be required to meet the local standards for these goods. This is clearly not the outcome which we seek to achieve.

Changes to the regulations are being drafted in order to overcome this anomaly for the plumbing industry, to make the requirements applicable to all plumbing goods, whether locally manufactured or imported. This will be achieved through applying 'conditions of use' regulations, an approach available through and consistent with the mutual recognition principles. The position in relation to the plumbing occupation highlights how the decision by heads of Government to implement mutual recognition principles has expedited work towards national uniformity.

While there is already a degree of mutual recognition in this industry, a study has been undertaken to determine the extent to which uniformity exists in relation to the education, experience and registration requirements of plumbers, gasfitters and drainers, and to identify what the registration requirements should be on a national basis to ensure national consistency. While this work has the in-principle support of South Australia's licensing boards, some of the proposals are contrary to both existing and proposed licensing requirements in South Australia and, as such, are not supported.

These are proposals to impose regulatory controls on activities which are not currently regulated in South

Australia; to restrict certain work which can currently be carried out by householders (such as changing tap washers, changing in-line water filters) to registered/licensed plumbers only; and to increase the cost of housing, in particular in relation to the construction of stormwater drains and the extension of cold water installations in this State.

These are not acceptable outcomes of uniformity for South Australians, and could be construed as an attempt by the industry to capture an unregulated sector of the activity, making it the exclusive preserve of the plumbing industry at the expense of the public of South Australia. The Government will be vigorously opposing the adoption of national standards which encompass these aspects.

In relation to fruit fly prevention, a further undertaking made by the Premier was to report on the ability of South Australia to maintain quarantine checks at State borders. My colleague the Minister of Primary Industries has advised that the Premier correctly described the position concerning State quarantine laws during examination of the Bill in another place, as follows:

Schedule 2 of the Commonwealth Mutual Recognition Act 1992 permanently exempts from mutual recognition certain laws relating to goods. Paragraph 2 of that schedule provides this particular exemption—

A law of a State relating to quarantine, to the extent that:

(a) the law (or a direction or instrument given or made under the law or some other action taken under the law) regulates or prohibits the bringing of specific goods into the State or into a defined area of the State; and

(b) the State or area is substantially free of a particular disease, organism, variety, genetic disorder or any other similar thing; and

(c) it is reasonably likely that the goods would introduce or substantially assist the introduction of the disease, organism, variety, disorder or other thing into the State or area; and

(d) it is reasonably likely that introduction would have a long-term and substantially detrimental effect on the whole or any part of the State.

Then there would be an exemption in those terms to the State law in the mutual recognition principle. These provisions were fully considered by the Department of Primary Industries when the proposed legislation first was circulated. The view was and is that the provisions will not impair South Australia's ability to legislate against the entry into the State of host fruits or fruit flies or other quarantinable produce. I trust that answers the numerous questions asked by members.

The Hon. K.T. Griffin: That is the report from the Minister of Agriculture referred to in the Premier's letter, is it?

The Hon. C.J. SUMNER: Yes, I think so. I look forward to the Committee stage, although not with much joy.

Bill read a second time.

ADJOURNMENT

At 6.22 p.m. the Council adjourned until Friday 23 April at 10.30 a.m.