LEGISLATIVE COUNCIL

Friday 23 April 1993

The PRESIDENT (Hon. G.L. Bruce) took the Chair at 10.30 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.

ELECTRICITY TRUST OF SOUTH AUSTRALIA (SUPERANNUATION) AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

I seek leave to have the second reading report inserted in *Hansard* without my reading it.

Leave granted.

This Bill seeks to make a series of technical amendments to existing superannuation provisions under the *Electricity Trust of South Australia Act 1946.*

The Bill also seeks to establish a non-contributory superannuation scheme for those employees of the Trust who are not members of the existing contributory schemes. The establishment of the non-contributory scheme is necessary so that the Trust complies with the requirements of the Commonwealth's Superannuation Guarantee Charge ("SGC") legislation. Under the SGC legislation, employers are required to pay a prescribed minimum superannuation contribution into a scheme.

The proposed Trust non-contributory scheme will closely follow the structure of the State Superannuation Benefits Scheme established under the *Superannuation (Benefit Scheme) Act 1992.*

The Bill also introduces a provision which will prevent the assignment of pensions. This will bring the Trust pension scheme into line with the state scheme provisions in this area. It is also a requirement of the *Occupational Superannuation Standards Act* of the Commonwealth that pensions not be assigned.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause is formal.

Clause 3: Amendment of s. 43f—Interpretation

This clause makes several amendments to section 43f of the principal Act which contains definitions of words and phrases used in Part IVB of the principal Act headed "Superannuation".

Clause 4: Amendment of s. 431—Establishment of the contributory scheme

Several amendments to section 43l of the principal Act of a consequential nature are made and 3 new subsections are inserted. Proposed subsection (3a) provides that the Rules may provide that contributors, or a class of contributors, have the option of transferring to another division of the contributory scheme or of terminating their membership of the scheme and that the exercise of such an option operates retrospectively.

Proposed subsection (4a) provides that a variation or replacement of the rules will be taken to have come into operation on the date specified in the instrument varying or replacing them whether that date occurred before or after the date on which the instrument was made or the date on which the Treasurer gave his or her approval.

Proposed subsection (6) provides that a right to a pension under the contributory scheme cannot be assigned but this subsection does not prevent the making of a garnishee order in relation to a pension.

Clause 5: Amendment of s. 43n—Payment of benefits

This clause provides that when all rights to benefits are exhausted in respect of a contributor the balance standing to the credit of the contributor's account must be repaid to the Trust to the extent of contributions made by the Trust in respect of that contributor. Any balance left in the account after this has been done can be paid to the contributor or to his or her estate under the Rules. A similar provision applies in relation to the State Superannuation scheme — see section 48 of the *Superannuation Act 1988.*

Clause 6: Amendment of s. 43o—The Fund

This amendment substitutes a new paragraph (c) in subsection (6) providing that one of the categories of contributors to the fund will be contributors whose contributions commenced on or after 1 February 1991 or who have, pursuant to the Rules, become contributors to the division of the contributory scheme established for the benefit of contributors referred to in subparagraph (i).

Clause 7: Amendment of s. 43r—Contributors' accounts

The main amendment to this section is the addition of a new subsection (8) which provides that subsection (7) applies to contributors who are employees of the Trust and contributors who have resigned from employment with the Trust but have elected to preserve their accrued superannuation benefits.

Clause 8: Amendment of s. 43s—Reports

This clause amends section 43s of the principal Act by striking out from paragraph (a) of subsection (3) "Scheme" wherever occurring and substituting, in each case, "contributory scheme".

Clause 9: Insertion of Divisions VIII and IX into Part IVB

This clause inserts Divisions VIII and IX into Part IVB of the principal Act after section 43s.

Division VIII - (comprising sections 43t — 43x) is headed "Electricity Trust of South Australia Non-Contributory Superannuation Scheme".

Proposed section 43t contains the definitions of words and phrases used in this Division.

Proposed section 43u provides that the Trust must establish a non-contributory superannuation scheme (the *Electricity Trust of South Australia Non-Contributory Superannuation Scheme)* for the benefit of—

- its employees who are not members of the contributory scheme;
- those members of the contributory scheme in relation to whom the benefits accruing under that scheme are not sufficient to reduce the charge percentage under the Commonwealth Act to zero;

- those members of the contributory scheme to whom a benefit is not for the time being accruing under that scheme.

The Trust must make rules that provide for membership of the non-contributory scheme, contributions by the Trust and benefits and other matters relating to the establishment and operation of the scheme which Rules must—

- must conform to the provisions of Division VIII;
- must be approved by the Treasurer; and
- may be varied or replaced by the Trust with the approval of the Treasurer.

On approval by the Treasurer, the Rules will be taken to have come into operation on I July 1992 or such later date as is specified in the Rules and a variation or replacement of the Rules will be taken to have come into operation on the date specified in the instrument varying or replacing them whether that date occurred before or after the date on which the instrument was made or the date on which the Treasurer gave his or her approval.

Proposed subsection (6) provides that the benefits provided by the Rules to, or in relation to, an employee must not exceed the minimum amount required to avoid payment of the superannuation guarantee charge in respect of the employee under the Commonwealth Act.

Proposed section 43v provides that benefits under the non-contributory scheme must be paid by the Trust.

Proposed section 43w provides that the Board must, in respect of each financial year, keep proper accounts of payments to, or in relation to, employees to whom benefits have accrued under the non-contributory scheme and the Board must prepare financial statements in relation to those payments in a form approved by the Treasurer. The Auditor-General may at any time, and must at least once in each year, audit those accounts and financial statements.

Proposed section 43x provides that the Board must on or before 31 October in each year submit a report to the Treasurer on the operation of this Division and the Rules during the financial year ending on 30 June in that year which must include a copy of the financial statements prepared by the Board in relation to payments to, or in respect of, employees of the Trust. Copies of the report must be laid before both Houses of Parliament.

Division IX (comprising section 43y) is headed "General". Proposed section 43y provides that the Trust cannot be required by or under the *Industrial Relations Act* (S.A.) *1972* or by an award, industrial agreement or contract of employment to make a payment or payments in the nature of superannuation or to a superannuation fund, for the benefit of a member of the contributory scheme or of a person to whom benefits accrue under the non-contributory scheme.

Clause 10: Substitution of schedule

The Schedule contains a transitional provision.

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

MUTUAL RECOGNITION (SOUTH AUSTRALIA) BILL

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. K.T. GRIFFIN: If some form of this legislation passes, can the Attorney-General indicate what might be the program for its implementation in the timetable and what sort of reviews will be undertaken within Government agencies in respect of the matters for which they have some responsibility?

The Hon. C.J. SUMNER: The situation is that mutual recognition is now operational between the following jurisdictions—New South Wales, Queensland, the Northern Territory and the Australian Capital Territory. Royal assent was received in Victoria on 20 April 1993, and proclamation is due in that State on 30 May 1993. It is scheduled for introduction during the next week or so in Tasmania and during the next session of Parliament in about June in Western Australia. The Government would like to achieve a 30 June proclamation date to bring this legislation in at the same time as Victoria. Whether that can be achieved I cannot say, but that is what we would like to do.

The Hon. K.T. GRIFFIN: The second part of my question concerns whether a particular program regarding implementation is proposed for Government departments and agencies relating to the matters for which they have some responsibility, recognising that there are likely to be a number of unforeseen consequences of the legislation. That is evidenced in the area of dried fruits and plumbing fittings where action is now being taken, but I am sure there are many others. Does the Government propose any review within the departments as part of the implementation process to try to eliminate these unforeseen consequences?

The Hon. C.J. SUMNER: Government departments have been preparing for this legislation for, I am advised, 18 months, and the proposal has been around since October 1990 with the agreement finally being signed by Heads of Government in May 1992. The Government originally foreshadowed a 1 January 1993 start-up date. Government departments have known that and have been working towards that date so they certainly will not be taken by surprise, but the practical issues will have to be worked through as they arise once the legislation is proclaimed.

Clause passed.

Clause 3—'Interpretation.'

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

Page 1, lines 20 to 29—Leave out the definition of 'participating jurisdiction'.

Clause 3 is the definition clause. A couple of issues need to be addressed. The first major issue of principle is whether mutual recognition ought to be achieved by the adoption of the Commonwealth legislation and referring part of the Commonwealth under placitum (37) of section 51 of the Commonwealth Constitution or whether it is sufficient to adopt the Commonwealth legislation as legislation of this State.

It is my very strong view that we ought to be adopting the Commonwealth legislation, with some amendments, and we ought not to be referring power. That is for the obvious reason that we certainly have a more significant measure of control over what may or may not happen. It is relevant also in respect of the later provision in the Bill that seeks to designate the Governor as the person who may approve the terms of amendments of the

Commonwealth Act, and that quite obviously bypasses the State legislature.

The Attorney-General and the Premier, in the other place, have said that it seems silly to be having Parliament deal with what might be regarded as minor amendments to the Commonwealth Act, and therefore the appropriate mechanism is to allow the Governor to do that. I disagree with that, because equally it may be that there will be quite substantial amendments to the Commonwealth legislation and, whether they be minor or substantial, it seems to me the only safeguard against these substantial amendments is to provide for the State Parliament to be involved in amendments. It is in that context that I hold the view, and the Liberal Party holds the view, that we ought to be adopting the Commonwealth Act and not referring power. So, that is a major issue which does have to be addressed.

The Hon. C.J. Sumner: We are adopting the Commonwealth Act.

The Hon. K.T. GRIFFIN: You are adopting it, but you are also referring power. I am saying that we should adopt it but with certain amendments. The question of amendment, which I have set out in my amendments, can be dealt with later. It is a question of adoption or adoption and referring power. If adoption, then later the question comes: should we be making amendments as part of the adoption process to overcome what a number of us on this side of the Chamber, including the Hon. Mr Gilfillan, have identified as particular difficulties with the Commonwealth Act? So, the first issue is adoption or adoption and reference of power. The second issue is that if there is adoption what amendments should be made to the Commonwealth Act? They are issues which we will address at a later stage.

The threshold question was referred to by the Hon. Mr Gilfillan and the issue I suppose is: why have this at all? The Liberal Party has taken the view that the objective is desirable; it is the means by which the objective is achieved that has flaws in it. We believe that the objective is desirable for a couple of reasons. The first is that the more the impediments to cross-State boundary trade and work can be broken down the better that will be for Australia, but particularly for South Australians, because there are opportunities in other States and Territories which, if we were not part of this scheme, we may not otherwise be able to take. It is also desirable in the national context for goods, for example, unless there are special characteristics required in a particular State or area, to be produced in the national market context. But there are differing points of view about occupational licensing and the standards which ought to be set, and quite obviously this sort of legislation will encourage people to address those particular issues, whether they relate to occupations or to goods.

So, it is a catalyst for reviewing legislative constraints upon occupational practice and upon the movement of goods. But it is still important to retain a State focus as we are seeking to do by the way in which the amendments that I now have on file will address this issue. So, in answer to the Hon. Mr Gilfillan, we believe that the objective is desirable. We believe that the mechanism is not the way to do it and that the way we are proposing, which retains a greater measure of control in South Australia, will not affect the catalyst effect of the legislation but will still enable the momentum to be maintained whilst still recognising some peculiarities of a State such as South Australia and the peculiarities of States such as Tasmania and Western Australia, where there may be special reasons for particular protections.

So, we believe that some form of legislation is desirable, and I put that beyond doubt. I thought I had put it beyond doubt at the second reading stage, because there will be some longer-term benefits for South Australia as well as for the nation in moving towards the mutual recognition standard. But as I indicated during the second reading stage, there are concerns from a whole range of groups within the community, not to protect their own patch but for perfectly legitimate reasons to ensure that there is a proper examination of the way in which this will operate in particular industries, particular professions and in relation to particular goods, without the *carte blanche* approach of the legislation with inadequate safeguards.

That is by way of general observation on the need for some form of mutual recognition legislation. My first amendment is to delete the definition of participating jurisdiction. What paragraph (a) of the definition does is not only to adopt the Commonwealth Act but also to refer to the Parliament of the Commonwealth the power to enact an Act in the terms of the Commonwealth Act. The reference of power is, I think, undesirable. It means that South Australia does lose legislative control over that initiative, and it is important, in my view, that we are not swamped by the majority decisions of States such as New South Wales and Victoria, where there is a significant body of the population and manufacturing and service provision industry.

Whilst there is no doubt that we played a significant part in the result of the most recent Federal election, the bulk of the decisions relating to manufacturing and other areas are made on the eastern seaboard and I think that we must try to keep some balance in the way in which those decisions are made. By not referring power, we will be able satisfactorily to do that. Members will see later in relation to clause 4 that I specifically say that the Commonwealth Act applies as a law of the State subject to the amendment set out in the schedule. That, of course, will be a matter for debate when we reach those amendments, but the principle is clear: adoption or adoption and reference of power; and, in my view, the reference of power concept is not in the best interests of South Australia.

It is interesting to note that we have before us and will debate next week the Trade Measurements Bill. That is uniform legislation. It is an Act of each State Parliament. It is not legislation enacted by the Commonwealth under either any adoption process or reference of power.

It is interesting that in an area as complex as trade measurements, which relates to measurements and packaging, the States along with the Commonwealth and Territories have now reached an agreement on uniform measurement legislation and that we are enacting that by State legislation. It seems to me that, if that can be done in that complex area, it can be done in regard to mutual recognition and that that is the way it ought to go.

The Hon. I. GILFILLAN: I am attracted by the amendment. It is not appropriate to go through the

arguments that I put forward in my second reading speech expressing profound concern at the implications of this legislation. It is compounded by trying to interpret the Federal Act and seeing what ramifications that would have on South Australia, an exercise which I think is proper. I do not have any objection to being drawn into it, except that I have not had enough time and I have not been adequately advised on it. The major question that keeps raising its head for me is what is to the advantage of South Australia in passing the Bill before us. Despite raising that question, raising concerns and having listened to the Attorney's reply yesterday—I am skipping through it again to see if I missed some parts of it—I do not find much reassurance that this measure will substantially improve the lot of South Australians.

It has quite profound risks. That would vary with the Government of the day both here in South Australia and in other jurisdictions as to how profound that risk would be in areas such as mutual recognition of professions and their qualifications that are acceptable in this State. This applies also to goods and labelling, but in general it also seems to be quite a substantial move towards centralism or a consensus form of government in Australia at least where a majority will have powerful influence, if not rule, to override the smaller States such as South Australia, which may well have pioneered legislation and standards in certain areas.

I continue to have profound concerns about the implications of the whole Bill. I expect the Committee stage to be an informative discussion and debate. I have attempted to translate the Hon. Trevor Griffin's amendments into the significance of the Bill. It seems to me that what he has done is emphasise something with which I agree 100 per cent, that is, that as a nation we are advantaged by having uniformity— provided that the uniformity is of a standard which we accept in South Australia.

I take as an example workers compensation. Along with the Hon. Terry Roberts, I have had much to do with that recently and, if we could persuade our colleagues in other States and federally to accept the South Australian WorkCover system, it would be to the advantage of workers throughout Australia and also to employers. In particular for South Australia it would put premiums on a parity and there would be none of this sort of hollow argument that we are at a disadvantage in South Australia because we have higher premiums.

However, I do not want to be drawn into that: I just use that as an example. The principle is sound. Whether we need to legislate or whether legislation will aid it at all still remains an open question for me, but I intend to support this amendment, at least, and probably several others, because it looks as if the series of amendments on file from the Hon. Trevor Griffin virtually gut the present Bill and leave us still very much an autonomous sovereign State. I will watch the plot as it unfolds. My first indication is to support the amendment.

The Hon. C.J. SUMNER: The Government would want to put its cards on the table right from the start so that there is no argument about where anyone stands, and no-one can claim to be under any misapprehension about the fate of this legislation. The Government can live with a proposition—which is what the amendment that the Hon. Mr Griffin has moved is directed to now—that the scheme can operate by the adoption of the Commonwealth law in South Australia, but without the referral of powers to the Commonwealth to deal with future changes to the law.

That position I have just described, with which we could live, is in fact the Victorian position. It is not the agreed position by heads of Government, but it is a position which heads of Government in other jurisdictions will live with. The scheme was for the adoption of Commonwealth law in South Australia and the other States, and a referral of powers to the Commonwealth so that that Commonwealth law adopted in South Australia could be amended by the Commonwealth Parliament.

However, the amendments in the Commonwealth Parliament could occur only if there was a request from all the participating States. So, the Governments would have to agree unanimously to the Commonwealth's changing the Commonwealth law before the Commonwealth could do it. That is the existing scheme. I really see no problem with that. I cannot understand why the Hon. Mr Griffin or the Hon. Mr Gilfillan would want to get in a state of agitation about it.

Commonwealth law is adopted in South Australia; we refer the powers to the Commonwealth for the Commonwealth to change the law in the future; but this law can only be changed in the future if all the participating Governments agree. That is the scheme and that is what has been passed in the States I have mentioned, namely, New South Wales, Queensland, the Northern Territory and the Australian Capital Territory—I might add on a bipartisan basis.

As I said before, Premier Greiner in New South Wales was one of the prime movers in this whole operation. I understand it was supported by the Labor Party and by the Australian Democrats in New South Wales. However, that is the scheme which I have outlined and which has been agreed to by those States I have mentioned.

In Victoria, there was a slight modification to that scheme, in that the Victorian Parliament has not referred to the Commonwealth Parliament the power to amend the Commonwealth law that is adopted in the participating jurisdictions. So, in Victoria in the future, if there is a proposal to change the Commonwealth law, then Commonwealth law can be changed by the Commonwealth Parliament and it will have effect in those jurisdictions that have adopted the scheme as originally proposed, namely, New South Wales and so on. But, in Victoria, the Victorian Parliament itself would have to adopt that change to the law.

The Government can live with that. It is not our preferred position, because we believe that the original scheme as proposed by heads of Government is the best to protect the integrity of the mutual recognition process. However, I am quite prepared to put on the record now that we can live with that Victorian proposal, that is, the adoption of Commonwealth law, but without the referral of powers to enable the Commonwealth Parliament to amend the law in the future without reference back to the State Parliaments.

As I understand it, that is what the amendment we are currently dealing with does. On that point we can live

with it. I oppose the amendment. I want to make that quite clear. I will be voting against the amendment, so I am certainly not conceding the point. I am putting the cards on the table in case people want to know where they stand; it might short-circuit a bit of debate. We will oppose this amendment, but I am now saying that that is a fall-back position that the Government can accept.

However, I want now to go on and address the honourable member's next amendment, if I may, Mr Acting Chairman, and make clear what is not acceptable and cannot be acceptable to the Government—the Hon. Mr Griffin's proposal to deal with this mutual recognition matter by the application of Commonwealth law in this State rather than by the adoption of Commonwealth law in this State. If it is just an application of laws exercise, then it becomes State law; it is not Commonwealth law which is adopted in this State. If it is State law, then it can be amended by State Parliament at any time and there is the capacity over time to undermine the mutual recognition principles. But, more importantly, if we do not adopt the Commonwealth law in the State of South Australia, then we get the whole problem of inconsistency between Commonwealth and State law.

When this matter was being discussed by the heads of Government it was considered that the adoption of the Commonwealth law in this State was the best way to go, because the Commonwealth law would take precedence and cut through any State inconsistent provisions because of the operations of section 109 of the Federal Constitution. However, if we adopt what the Hon. Mr Griffin is proposing, namely, an application of laws approach, then it is State law that operates in South Australia. We then have the problem of inconsistency and the non-operation of section 109 and the capacity for the scheme to be undermined over time. But, more importantly and critically, if the honourable member's next set of amendments to apply this scheme by application of laws is in place, then we will have the quite curious—I would say bizarre—situation where we will be obliged to accept the qualifications and standards of other States in South Australia, but they will not be obliged to recognise our standards and qualifications in other States—

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: Let me finish—because the scheme is a national scheme which involves a process of the adoption of Commonwealth law. The recognition of our laws interstate depends on us in this State having introduced the scheme by means of the adoption of laws process, not the application of laws process. So, if the Hon. Mr Griffin's next set of amendments are passed—which we will not accept—then we will have the absurd situation of interstate standards and qualifications being recognised in South Australia, but the qualifications of South Australians and standards and products in South Australia not being recognised in the other States.

The Hon. I. Gilfillan: I do not understand why we are going to be vulnerable.

The Hon. C.J. SUMNER: Because we have applied the mutual recognition laws in South Australia, but because we are doing it by this means the other States will not recognise our laws. We have busted the national agreement on it. So, effectively, it means that South Australia will be out on its own. If that is what honourable members want, that is fine; they can vote against the legislation and we will see where we go. But I want to put it on the record now so that we do not have to pussy-foot around. We are prepared to agree to the Victorian solution—although we do not want the five years—but we have a fall-back position and we will come back to the Victorian position without the five years. However, we cannot accept the mechanism whereby the Hon. Mr Griffin intends to introduce this scheme in South Australia because we believe it will ultimately undermine the scheme; and, secondly, the way he has done it, in any event, will mean that we are not part of the national scheme, so it will be mutual recognition for other States in South Australia but not mutual recognition for our standards and qualifications, etc., in the rest of Australia.

The Hon. I. GILFILLAN: I am the sort of light relief between the major proponents, Mr Acting Chairman. In fact, I believe that I probably represent the vast majority of South Australians to whom this debate is absolute gobbledegook and have not the faintest idea of what it means, nor the implications of it. I presume that there might be one or two of my colleagues in this place who are about as naive in these areas as I am.

The Attorney stands and tells us—and I have great respect for the Attorney's opinion—that if we follow the amendment track of the Hon. Trevor Griffin we are then going to be the victims with a lose/lose blend.

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

The Hon. I. GILFILLAN: I am waiting eagerly to hear the other major player in this, the Hon. Trevor Griffin, defend his position, and then I will have to determine which of the two authorities I take note. It seems to me, regardless of which of the two lawyers, the Attorney or shadow Attorney, are right it is a major issue for the State which has had virtually no public debate through the media or in the ordinary chit-chat of people in this place, let alone out in the public arena. The ramifications as to how it affects the day-to-day life, the presentation of product, the ability of certain people or professions to work in South Australia or for South Australian professionals to work in other States is quite a significant feature. Unless we are on the track to surrendering our individuality and our sovereignty as a State we, as State politicians, have to zealously watch what will be the long-term consequences of any legislation which diminishes the right of us as South Australians to legislate for the quality of life and the conditions that apply within South Australia.

That may sound a rather grandiose interpretation of this legislation, but, as I understand it, I do not think it exaggerates its significance. So, in some ways I hope I am going to prod and probe for explanations for the simpler members of the public, those who will not jump automatically to the consequences of Constitution section 109 and the ramifications as to what legislation will prevail over what other legislation. I feel quite bemused about the categoric statement by the Attorney that this track of amendments that are on file, and presumably will be moved by the Hon. Trevor Griffin, will leave us in the position where in South Australia we can legislate for certain standards of qualifications for people who will

practise their professions in South Australia. When we get to look at this Federal Act, the complexity of the sort of decisions which are able to be overridden is really quite remarkable, as are the requirements that do not need to be complied with. I am talking about section 10 of the Federal Act. I think it is important that I read this particular section out; it is not very long. It provides:

The further requirements referred to in section 9 are any one or more of the following requirements relating to sale that are imposed by or under the law of the second State.

In other words, they do not need to be complied with. It continues:

(a) a requirement that the goods satisfy standards of the second State relating to the goods themselves, including for example requirements relating to their production, composition, quality or performance.

I hope members are listening to this. I am sure that the Attorney has read it and that he knows it backwards, but many members may not know what is contained in this Act that we are blissfully accepting.

The Hon. R.I. Lucas: Do you have the right Act this time?

The Hon. I. GILFILLAN: I don't know about that, and I will not be drawn off.

The Hon. R.I. Lucas: Is it the one the Premier sent you?

The Hon. I. GILFILLAN: Yes, this is the one. I am reading section 10, believing it to be the real article. I want members who care about this to listen to what it is that we are abrogating as requirements that do not need to be complied with in the second State. We cannot object to these things if they do not meet our standards. The section continues:

(b) a requirement that the goods satisfy standards of the second State relating to the way the goods are presented, including for example requirements relating to their packaging, labelling, date stamping or age;

(c) a requirement that the goods be inspected, passed or similarly dealt with in or for the purposes of the second State;

(d) a requirement that any step in the production of the goods not occur outside the second State;

(e) any other requirement relating to sale that would prevent or restrict, or would have the effect of preventing or restricting, the sale of the goods in the second State.

That is section 10 of the Federal Act that we are moving cheerfully through this morning to take on board as obliging South Australia. As I understand it, the Attorney is putting the view that if we are impudent enough to want to have our own legislation to control these matters in South Australia it will be over-ridden whether we like it or not. In other words, products from the other States will be marketable in South Australia willy-nilly.

The Hon. C.J. Sumner: In accordance with this law.

The Hon. I. GILFILLAN: With the Griffin amendments?

The Hon. C.J. Sumner: It is under our scheme as well as with the Griffin amendments.

The Hon. I. GILFILLAN: So it is a lose, lose situation, as I said to start with.

The Hon. C.J. Sumner: That is right; I agree with you.

The Hon. I. GILFILLAN: I think it is deplorable. I think everyone ought to have a good gaze at section 10 and see what the ramifications would be for South Australians and whether we want to surrender the right to determine those matters for ourselves. I do not intend to speak much longer. As I have said, I am the sort of fill—in act between the major players, and the Hon. Trevor Griffin no doubt will now defend his position in relation to his amendments.

The Hon. C.J. SUMNER: Surprisingly enough, I agree with what the Hon. Mr Gilfillan has said. In my second reading reply I said that I regard this as one of the most significant pieces of legislation that this Parliament has had to debate recently and as one of the most significant agreements that has been reached amongst the States of our Australian Federation for many years. I think this legislation will probably be seen in history as important as some of the other agreements or constitutional changes, such as the giving up of income tax by the States, etc. There is no question that this is important legislation. On that point, I agree with what the Hon. Mr Gilfillan said about the effect of section 10, but I do not agree with him on whether it is desirable. He says it is not; I say it is absolutely essential, because we in Australia have to see ourselves more and more as Australians. We can no longer go on with this niggardly, narrow, parochial, States rights approach to issues with which we have to contend in this country.

Look at the European common market: 350 million people from different nations who speak different languages are getting together on issues of free trade within their area. They are harmonising rules and regulations across the board regarding product quality, worker—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Just a minute, and of course there are incredibly difficult issues about how to do this—the Maastricht treaty and the rest. Of course, there are incredible tensions in an exercise such as this, but they are doing it in a place where there are 350 million people and five, six, seven or eight languages spoken, yet we in a country of 17 million, at least as far as this Parliament and the Hon. Mr Gilfillan is concerned, cannot move towards this notion of Australia as an economic unit trading amongst ourselves.

The Hon. I. Gilfillan: That's rubbish. You are making the point as if this measure is a block; that we are blocked for trading as a nation. That is absolute rubbish.

The Hon. C.J. SUMNER: Yes, we are. This measure is designed to break down the barriers in Australia to the movement of goods and people and the recognition of qualifications and standards. I agree with the Hon. Mr Gilfillan that this is significant legislation—I certainly believe that—but I also believe that it is essential for Australia as a nation to take on these issues, and that whatever else—and I have said it in this Council before—one may say about Premier Greiner, I think he was a modern Liberal and I think he saw the imperative to get Australia moving again. He saw the need not to get bogged down as we always do with these parochial, narrow States issues, and that is why he, with the Federal Labor Government at the time, got the agreement of all heads of Government (Liberal, Labor and the National-Liberal Party in the Northern Territory) to introduce this proposal. The honourable member is

quite right: it does diminish the rights of South Australia to legislate in these areas, but I make no apology for that—I support it fully.

I have made speeches in the past. Politics is a funny business: if you hang around for long enough the people will eventually catch up. I have made speeches about republicanism. In fact, I moved a motion at the State convention of the Labor Party over a decade ago on this topic. It has now become the flavour of the month. I made speeches 10 years ago about the need for us to see Australia as a nation as far as trading in economic terms is concerned. I have made speeches on that topic in this Parliament and in the public arena over the past decade. I have talked about the importance of getting uniformity of consumer laws and laws that impact on the Australian economy and on the markets of Australia. Sure enough, this proposal will eventually be accepted by this nation, but I will not get any recognition for it. I am just a parochial politician in South Australia who occasionally sounded off on topics. It is just like a whole lot of things for which you never get credit in this business because people with bigger egos than mine like to take the credit for them. Nevertheless, I say that this is not something new as far as I am concerned. It is something that I advocated—and I am not referring to this particular mechanism of dealing with the issue but the notion that we ought to have our Australian standards seen as one. We have only 17 million people, and I believe it is essential for us to go down this track. If I had my way—

The Hon. I. Gilfillan: Would you abolish the State Government?

The Hon. C.J. SUMNER: I do not think that is a viable proposition. I have a few views about it that I may expound on at some time in the future, but not at present.

Members interjecting:

The CHAIRMAN: Order!

The Hon. C.J. SUMNER: Health permitting I have another five years at least. So in one guise or another, unless I take a retirement or separation package, I will have the right to be here in no matter which guise.

The Hon. R.I. Lucas: You have the right, but will you be here?

The Hon. C.J. SUMNER: Well, there is a good chance that I will be here. I am elected for another five years. However, my expectation, Mr Chairman, is that I will be here as Attorney-General for the next five years. But no doubt some honourable members opposite would take issue with that. However, I digress. I have spoken about the need to get national laws in a number of areas. For instance, I believe that the States should refer powers to the Commonwealth on defamation law. Communications around Australia are not confined to State borders. One can instantaneously communicate all around Australia and it is bizarre that in Australia we have different defamation laws operating—

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: Just let me finish.

The Hon. I. Gilfillan: Do you ever interject?

The Hon. C.J. SUMNER: Never. Very rarely. I have lost my enthusiasm for it in recent years. The media operates on a national basis but we do not have uniform defamation laws. I think that is silly. We have been trying to get uniform defamation laws now for many years. It was on the Attorneys-General Standing Committee agenda when I first became Attorney-General in 1979, and it is still there. There has been no resolution. We will only get uniform defamation laws by referral of powers to the Commonwealth. We have been trying to get uniform consumer credit laws in one guise or another since the early 1970s, an exercise that has been going on for over 20 years.

The Hon. I. Gilfillan: You argue harmony with this one—

The Hon. C.J. SUMNER: Just a minute, let me finish.

The Hon. I. Gilfillan:—and now you are saying that you can't do it in the other areas.

The Hon. C.J. SUMNER: I also believe that the Commonwealth should legislate in the area of consumer credit laws. My view is that we have got past the situation of States' rights egos in areas of consumer credit laws and other areas of standards in the production of goods or the delivery of services which impact on the economy and which restrict the freedom of movement of people and goods around Australia. So, I have a very clear view on it, and I have had it for a long time. I have no compunction about expressing it here; I am already on the public record about doing it. This scheme actually does, in some ways, part of what I have been advocating for some considerable time. So I very strongly support it. That is the philosophical question. I just wanted to make it quite clear to the Hon. Mr Gilfillan that he is dead right: it is an important Bill and it has a significant effect on South Australia. However, I differ with him where he says it may not be necessary or that we are losing our rights, because I very firmly believe that we have to see ourselves as a nation, particularly in the area of the economy and free market in goods and movement of people.

The Hon. K.T. GRIFFIN: Mr Chairman, I do not think anyone denies that this is an important piece of legislation. The difficulty that we all have on each occasion—

The Hon. I. Gilfillan interjecting:

The Hon. K.T. GRIFFIN: It was introduced in the House of Assembly on 3 March and came here on 1 April.

This sort of legislation highlights the constant dilemma for Parliaments where we have so-called uniform legislation: these deals are all negotiated by Governments and then the Parliaments are expected to be rubber stamps. We had this dilemma in relation to the Corporations Law, trade measurements and a whole range of other legislation. We now have it in relation to this, and I am sure we will have it in relation to many other issues in the future. It requires Parliaments, particularly in one House where there may be a different view from that of the Government which has negotiated an agreement, to decide whether they rubber stamp or seek to make some reasonable amendments with a view to having those issues then taken out at a later stage with those other States party to the agreement.

So, it is a constant problem and dilemma for Parliaments how they will handle this sort of legislation. We saw what happened in relation to the Corporations Law in Western Australia, where there was one House of the Parliament that had a very serious concern about the

way in which the scheme was being bulldozed through the Parliaments of the States—and it was bulldozed—under threat from the Commonwealth, and now I think there are many business people who regret handing over the power in a wholesale fashion to the Commonwealth and the Commonwealth instrumentality. However, with this sort of legislation, where the Parliaments are expected to rubber stamp, I suppose that plays into the hands of those like the Attorney-General who argue that Australia is one nation and we ultimately ought to abolish the States.

The Hon. C.J. Sumner: I did not say that.

The Hon. K.T. GRIFFIN: That is where you are leading to. I know he did not say it, but that is where he is leading to. So it is a major problem, and if a House of Parliament decides it wants to flex its muscles, in the interests of the State but recognising the desirability of the objective of the legislation, then as sure as anything it will be canned later for having taken that course of action and creating some short-term uncertainty. So that is another facet of the dilemma. But I think that on occasion one has to face up to that, particularly with legislation as important as this. In respect of trade measurements legislation, to which I have referred earlier, one is dealing with particular standards, and it is equally difficult, although in that respect the standards are ultimately set by regulations. But the dilemma is there, too, about the issue of disallowance of regulations.

If one disallows the regulations which purport to be uniform across the nation, that creates a hiatus and a basis for criticism of those who might be so bold as to exercise the responsibility which electors have given them in relation to the issues which come before them. So, that again is an instance of the problem that we face. The Opposition in this State, as have Oppositions in other States of other political persuasions, has had no part in the development of this scheme. The so-called uniform legislation was not, as I recollect, published for comment. Under the old national companies and securities scheme, at least the legislation was published as exposure drafts and people who had an interest in it were able to make submissions on the legislation.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: There was a proposal, sure, but the nitty-gritty of the legislation certainly was not published in that way. The proposal was an objective with which everyone agreed, but the detailed legislation, as I understand it, was not published. Turning to the substantive issue on which the Attorney-General spoke, there is quite obviously, if my scheme is accepted, a possible difficulty with section 109 of the Federal Constitution relating to inconsistency.

However, that does not apply if the Commonwealth has no jurisdiction in a particular field in which it is purported to legislate. Section 109 raises the issue of covering the field and whether, in legislating, the Commonwealth has legislated within power and in a manner to cover the field. So, one must question whether in this context the Commonwealth does have all the power that it has purported to exercise under the Commonwealth Mutual Recognition Act 1992. I acknowledge that it is a question and it may cause some concern, but that can be overcome by some legislative enactment at the Federal level that recognises the right of the States to enact application of laws legislation along the lines that I have proposed.

The Hon. C.J. Sumner: They're not going to do it.

The Hon. K.T. GRIFFIN: Well, they may not do it. That is fine: let them take that view. And in relation to the States, again I acknowledge—

The Hon. C.J. Sumner: If they did that, every other State would have to enact it as well.

The Hon. K.T. GRIFFIN: I am just about to talk about that. I acknowledge that the definition of 'participating jurisdiction', at least in the New South Wales legislation and probably in the other States (although we do not know yet what is in Western Australia's) does provide that participating jurisdiction is a State for which there is in force an Act of its Parliament that refers to the Parliament of the Commonwealth the power to enact an Act substantially in the terms of the Commonwealth Act, or that adopts the Commonwealth Act under paragraph 37 of section 51 of the Commonwealth Constitution.

At least, the Attorney-General reluctantly acknowledges that it would be acceptable, although not the most desirable course from the Government's point of view, to adopt the Federal legislation, and that that would then bring South Australia within the definition of 'participating jurisdiction' in the legislation of the other States and the Commonwealth. Of course, if we do not adopt but apply the law it means that, in the other States, there would need to be some amendment to their legislation that recognises South Australia as a participating jurisdiction.

Notwithstanding the haste to enact this legislation, it is my view that we ought to proceed with the amendments that I am proposing; that if, ultimately, that form is the form in which the legislation passes the Parliament, there ought to be a request to the other States and Territories and to the Commonwealth to recognise the form in which South Australia (and perhaps even Western Australia, ultimately) prefers to enact its legislation. I have no doubt that most of the States will cooperate in that respect.

The Attorney-General made a remark in the early stages of his observation on my amendment, as I recollect, that I was seeking to undermine the uniform scheme. I deny that. I do not seek to undermine it. I seek to facilitate it but in a form that is, in my view, more appropriate for South Australia. Whilst with application of laws legislation it may be that there is a trend towards disuniformity, I suggest that that rarely occurs now in areas where it is regarded as important to have uniformity, such as the trade measurements-type legislation and packaging legislation to which I referred earlier. I recognise the problem to which the Attorney-General has referred but—

The Hon. T.G. Roberts: But not mutually.

The Hon. K.T. GRIFFIN: Of course I do. We may disagree on some issues, on principles, but at least we are prepared to acknowledge on occasions that we agree with each other on certain issues. On this I agree with aspects of what the Attorney-General is saying. I have acknowledged that he is correct in other respects, but what I am saying is that we proceed to deal with it in a form that is acceptable, at least to this Council, and those

issues can be further addressed in discussion between the two Houses.

The Hon. C.J. SUMNER: The Hon. Mr Griffin is conceding, then, that if we go the application of laws approach it is a lose-lose situation: because as presently constituted, the Commonwealth and all the other States that have passed it to date do not recognise a mutual recognition proposal which is based on application of State laws in the respective States. So, the Hon. Mr Griffin would concede from what he said, I think, that if his amendment—not this one but the subsequent one—is passed, then we have a lose-lose situation.

The only way we can get out of that lose-lose situation is for this State to approach all the other States that passed the legislation and the Commonwealth Government and get them to change the scheme that has been agreed, to enable a State to introduce this mutual recognition proposal by an application of laws approach. I think that is living in fantasy land. That will not happen, I am sorry.

The Hon. K.T. Griffin: How do you know it will not happen?

The Hon. C.J. SUMNER: Because I have some judgment about politics and how it works, and when you have five of the States of Australia, including the two largest (including Victoria), who have agreed to a scheme, then they are not going to listen to South Australia wanting to go its own merry way in relation to this matter, and they will not agree for one reason, in my political opinion. That is, because if they permit South Australia to do it by an application of laws approach, then effectively at any time that you want to undermine the mutual recognition proposal South Australia can introduce its own legislation to undermine it and to introduce by that legislation barriers to mutual recognition by requiring standards that are higher than those interstate in any particular occupation.

That is the reality. New South Wales and Victoria will not agree to that. Why would they agree to one State being able to undermine by its State legislation the whole scheme? You can try, I suppose, if you like, but my guess, and a very solid guess, is that much work has been done on this, much political capital invested by people of all political Parties and my own view is that if we go back to these heads of Government and say that is what we are going to do, they will say 'Too bad: you do it on your own. You are only a million and a half people: tough.' I am sorry to be realistic about it, but that is life in the big world.

I would like to refer to what the Hon. Elisabeth Kirkby, one of the Australian Democrats in the New South Wales Parliament (who, I am sure, is well known to the Hon. Mr Gilfillan), said on 27 October 1992, when she stated:

> The Australian Democrats support the Mutual Recognition New South Wales) Bill... the advantages of mutual recognition were listed in these terms: they would allow faster adjustment to changing conditions and the avoidance of rigid and proscriptive technical standards which could be superseded by rapid technological change; they would reduce the heavy resource commitment and protracted negotiation often required to achieve uniformity;

Interposing here, that is in response to one of the interjections of the Hon. Mr Gilfillan when I was speaking previously, that this mutual recognition proposal has in fact been a spur to getting uniformity in areas where it had not been before. The Hon. Elisabeth Kirkby goes on:

> ...they would help to reduce duplication and administrative costs by encouraging the adoption of rules and decisions developed elsewhere; and they would also encourage local authorities to review their regulatory requirements to ensure they are as efficient and cost effective as possible.

That is a pretty fair summary from an Australian Democrat who sees the sense in these proposals.

The Hon. I. GILFILLAN: This is an important Committee discussion. I respect my colleague the Hon. Elisabeth Kirkby's opinion but in the Democrats we are not lock-stepped into any response to a measure. Indeed, it is my right and responsibility to interpret legislation as I see it—with respect, but certainly with no obligation to adopt the opinions expressed by a fellow Democrat. This debate ought to be continued free from the prophecy or political analysis that the Attorney places on it.

He may well be right that there are obstacles with other Parliaments elsewhere but, as with the State Bank where we have been virtually blackmailed into selling it because of the interference of economic bribery by the current Prime Minister, I do not intend to sit in this place and support legislation on the basis that, if we push for what we really think is best for South Australia, it will be overridden, anyway.

I will not be influenced by that. It may happen and it may be a factor down the track. I respect the Attorney's view and I think that to date this has been a worthwhile debate opening up areas which are significant to South Australia and most, although not all, of it germane to this Bill. I cannot say that the expected political career of the Attorney is absolutely essential in this debate on the Bill, in the Committee stage (interesting though it may be); five years—

The Hon. C.J. Sumner: I was only responding to interjections.

The Hon. I. GILFILLAN: He should ignore to interjections, just as I should. Just as I read section 10 of the Federal Act, I intend to read section 20, because it is important that members in this place who are paying attention to this debate know what it is in this Act that we are being urged to adopt holus-bolus. Section 20 relates to entitlement to registration and continued registration. I earlier read section 10, which dealt with goods, and section 20 reads as follows:

> (1) A person who lodges a notice under section 19 with a local registration authority of the second State—

the second State for our intents and purposes is South Australia, and someone who has been registered in another State is the first State—

> is entitled to be registered in the equivalent occupation, as if the law of the State that deals with registration expressly provided that registration in the first State is a sufficient ground of entitlement to registration.
>
> (2) The local registration authority may grant registration on that ground and may grant renewals of such registration.
>
> (3) Once a person is registered on that ground—

that is, the ground that they were registered in in the first State—

the entitlement to registration continues, whether or not registration (including any renewal of registration) ceases in the first State.

(4) Continuance of registration is otherwise subject to the law of the second State.

(5) The local registration authority may impose conditions on registration, but may not impose conditions that are more onerous—

I emphasise 'more onerous'—

than would be imposed in similar circumstances in the first State (having regard to relevant qualifications and experience) if it were registration effected apart from this part, unless they are conditions that apply to the person's registration in the first State or that are necessary to achieve equivalence of occupations.

Perhaps there are interpretations of that which are a little obscure to members, but the nub of it is that standards which pertain in the first State will have to be accepted by the second State. That section and the implications of section 10 to me are an abrogation of the rights of the State of South Australia to determine certain areas for itself.

The debate has nibbled at the edges of State rights and, indeed, the even more profound question as to whether the State's jurisdiction and State sovereignty will continue down the track. Enticing though it may be to be drawn into that, that is not the debate with which we are now confronted. We are confronted with a situation that South Australia is a sovereign State. We are elected to this place to enact laws which apply to the best Governments of the people of South Australia.

The Hon. C.J. Sumner: That is why I am supporting this Bill.

The Hon. I. GILFILLAN: The interjection—and it is a fairly frequent one from that source—is that that is why the Attorney is supporting the Bill. Despite my frequent questions about how South Australia and South Australians will benefit, apart from rather voluminous and vague answers, I have not yet received anything specific and substantial to say, 'Yes, South Australians will be better off in this context, that context and this other context after the passage of this Bill'. I have not seen that and it has not yet come forward.

The Hon. C.J. Sumner: You're not listening.

The Hon. I. GILFILLAN: I am listening—I am listening so well that I can pick up the Attorney's fourteenth interjection on my speech. It is important to view this legislation in its own detached value as presented to this place regardless of what may be consequential or political impacts and measures down the track. The Attorney has said—and in this I think we dwell to do some good purpose—that this is one of the most significant pieces of legislation that we have debated in recent times and there ought to be an impetuous treatment of it.

If through the process of this Committee stage we reach the point where there needs to be further discussion, so be it, but many of the amendments which will follow only require a repeat of this debate, so it is worthwhile that at this early stage of the Committee debate we really have an exhaustive debate on the overall global impact of the Bill.

I am attracted to the parcel of amendments that the Hon. Trevor Griffin has on file and I intend to support them. As I said (and I have no embarrassment in saying it again), there may be aspects of the measure with which I am not familiar. There may be areas of the Constitution which will have an impact which has not been fully explained or which I have not fully understood yet, so it is an area in which there can be further analysis or portrayal of what are the advantages and disadvantages. In essence, however, we need to retain the right in South Australia to determine our own standards in these matters which will be assumed by this Federal Act. That is my basic position and I intend to support the amendments.

The Hon. K.T. GRIFFIN: I want to respond to the Attorney-General's observation that under my scheme South Australia is in a lose-lose position. I do not accept that. With South Australia retaining control over what happens in relation to mutual recognition so far as South Australia is concerned, it does mean that where goods are produced in South Australia which are of a superior quality to those of other States they will not be constrained from distribution in other States.

Where there are products which are inferior and which do not meet standards—we talked about the dried fruit example—then South Australia is not going to be disadvantaged by their not coming into the State. The same applies to tap fittings. We have been through this business about plumbing ware, where the Premier has acknowledged that there is a problem with mutual recognition because it will allow into South Australia products which are not suitable for South Australia and which will be inferior. In this case the consumer will suffer. Having removed the restrictions, the Government is now going to put them back if the Bill is passed in its original form. That is an extraordinary way to argue in favour of mutual recognition.

In relation to training, my colleague the Hon. Robert Lucas has made observations about teachers, and I am sure there are many other areas. How will South Australia lose? I would suggest that it is an important question if my proposition is accepted. I would suggest that there may be some disadvantages—

The Hon. C.J. Sumner: South Australian teachers will not get automatic recognition in other States.

The Hon. K.T. GRIFFIN: They will not get automatic recognition, anyway.

An honourable member: They will be better qualified.

The Hon. K.T. GRIFFIN: They will be better qualified. They will get recognition. That is not the big issue in relation to the legislation as far as South Australia is concerned. I just wanted to put that on the record.

The Hon. R.I. LUCAS: In relation to the teaching profession, I raised in the second reading debate a number of submissions that I had received and the Attorney responded briefly at the conclusion of the second reading debate in relation to the teaching profession. I want to remind the Attorney-General of the submission I received from the Teachers Registration Board on the issue. The Chairperson of the board stated:

Under the terms of agreement on mutual recognition a VTAC working group was given the task of recommending to MOVEET [which is the ministerial council] that where an occupation was only partially registered throughout Australia deregistration should follow unless its retention could be justified

on the basis of certain criteria relating to public health and safety.

I also indicate that I received a number of other submissions from unions and others indicating their belief that, under the legislation and as a result of the discussions that had gone on at a national level, the result of the passage of the legislation would be deregulation of the industry.

Obviously, the advice to the Attorney-General is that that is not correct. Does the Attorney think that the Chairperson of the Teachers Registration Board does not understand the current discussions that have gone on at the national level in relation to mutual recognition and that her assessment of the position is factually incorrect?

The Hon. C.J. SUMNER: I do not know whether or not we are into a deregulation mode with the registration of teachers-

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: Everyone—if the world wants to do away with the registration of teachers.

The Hon. R.I. Lucas: I am not interested in the world; I am interested in South Australia.

The Hon. C.J. SUMNER: I am interested in Australia and then the effect on South Australia. It is your point; the honourable member raised the question of national discussions, as I understand it. What I am trying to say is that I do not know what is the state of play in relation to whether or not teachers should be registered—whether it is a good idea or a bad idea. Different States take different views. As I understand it, some States do not have registration of teachers; some States do. Where there is a system of registration of teachers, then under mutual recognition that—

The Hon. R.I. Lucas: You say 'When there is a system of registration'; do you mean in every State or in some States?

The Hon. C.J. SUMNER: In some States. When there is a system of registration in some States, say, in Queensland, then that teacher in Queensland who has been registered there would be entitled to recognition in South Australia as a teacher under mutual recognition principles. New South Wales does not have a system of registration of teachers and South Australia does. Under mutual recognition principles a non-registered teacher in New South Wales would not be able to come to South Australia and automatically be entitled to registration. In other words, mutual recognition applies only where there is a system of registration or licensing, or whatever one likes to call it, in place.

If nationally it is decided that the deregulation mania is such that registration of teachers should not be done, and that happens all around Australia, it does not mean that South Australia has to do it. If South Australia wants to keep its system of registration then it can, and it would be still be valid. No teachers around Australia could then teach in South Australia unless they qualified under our own registration system. As I understand it, that is the effect of mutual recognition.

The Hon. R.I. Lucas: We can keep our barriers here in South Australia in all professions. That is what you are saying.

The Hon. C.J. SUMNER: Provided they totally deregulate.

The Hon. K.T. Griffin: So, if the registration qualifications in Queensland are lower than those in South Australia, that still enables the Queenslanders to come into South Australia?

The Hon. C.J. SUMNER: That is right, because what we are doing is saying that if there is in place a system of registration then it is probably likely to be similar in South Australia to that in Queensland. It may not be exactly the same, the wording may be different and the qualifications might be slightly different.

This is the whole point of mutual recognition: to harmonise those things and say, 'Whatever the technical differences for requirements to register teachers in Queensland and South Australia, they should be mutually recognised.' That is one of the rationales of mutual recognition.

However, if we have a situation in Queensland, say, where the registration system of teachers is so low—it is petty and does not meaning anything—then we have to work nationally with Governments, authorities and professional bodies to arrive at standards that are acceptable around the nation. That process is happening across a whole range of occupations. I know that the legal profession is currently working hard, through the Law Council of Australia, to get uniform standards.

The Hon. K.T. Griffin: Not because of mutual recognition.

The Hon. C.J. SUMNER: My word! It is most certainly getting a hurry up because of mutual recognition. They were doing it, albeit slowly. What mutual recognition has done—and this is one of the really good things about it—is that it has concentrated people's minds. All around Australia at the moment we have Governments, professional bodies and trade associations all working to get acceptable standards around the nation. There will be problems, of course, with different standards, but they will be resolved over time by States and bodies getting together and agreeing what is appropriate.

The legal profession, for instance, is addressing what is the appropriate standard for admission in South Australia, what should be the degree course, what is an appropriate degree course and what should be the period of articles or practical training before admission. Frankly, I do not think there is a problem in the law and basically the requirements around Australia for lawyers were restrictive practices. I do not think there was ever a problem in a lawyer in Queensland being able to practise in South Australia. There should have been mutual recognition.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: As the Hon. Mr Griffin said, the High Court resolved it and said one could not put up barriers to legal practice between one State and another. However, the Law Society is addressing that and other societies will have to do so. I am not sure that that answers the honourable member's question, but I tried.

The Hon. R.I. LUCAS: I want to return to the question from the Teachers Registration Board that remains unanswered. The Attorney talks about national discussions between Governments. What the Teachers Registration Board is saying is that there are already national discussions. We have the legislation before us,

but as part of this whole discussion process Governments, departments and officers are discussing it already. I am presuming that the Attorney's Government, his Government's Minister of Education or perhaps the previous Minister of Education have agreed that where there is partial registration throughout Australia—and the Attorney-General is saying that that is the case in relation to the teaching profession—then the agreement is that throughout Australia deregistration should follow unless its retention could be justified on the basis of certain criteria relating to public health and safety. Those criteria do not relate to the teaching profession.

We have here what the law is before us, or what it may look like after we have had a look at it, and we have the national legislation, but as the Attorney has indicated all these discussions are going on as part and parcel of this. What the Teachers Registration Board is saying appears to be quite different in relation to policy agreements between Governments, in relation to this whole area of mutual recognition, from the impression the Attorney has given me in the Chamber. The board is quite clearly saying that where there is partial registration throughout Australia, then the agreement is that there will be deregistration, unless it is something to do with public health and safety. I do not think even the Attorney is going to argue that the teaching professions relate to public health and safety provisions.

So, the board seems to be saying to us that there has been some sort of policy agreement between Governments, his Minister in his Government—or a colleague of his in this Labor Government—to deregister the whole teaching profession. The Attorney was indicating to the Committee that, in this position of partial registration that we have throughout Australia, if we so chose here in South Australia we could maintain our barriers in South Australia and remain the only regulated State in the nation. If everyone else caught the disease, or whatever, of deregulation and deregistration, we could stand alone in South Australia as the last bastion or bulwark against deregulation of the occupations and maintain registration of teaching and the other professions, whilst everyone else in Australia has deregulated and deregistered.

So, we could stay here in South Australia and look at the inferior teaching product that might be coming out of the other States and Territories and say, 'No, not for us; we will not take a teacher from New South Wales, Victoria, Tasmania or the Northern Territory; we in South Australia will stand alone, insist on our standards, regulations, requirements and restrictions and insist that we have a quality teaching product here in South Australia.' That is the Attorney's story to the Committee. What the Teachers Registration Board Chairperson is saying—

The Hon. C.J. Sumner: You don't understand. Get on with it.

The Hon. R.I. LUCAS: The Attorney says I do not understand. That may well be so. But if I do not understand, neither does the Chairperson of the Teachers Registration Board, neither does the representative of the non-government teachers—

The Hon. C.J. Sumner: Come on! Come on!

The Hon. R.I. LUCAS: Mr Chairman, I resent—

The Hon. C.J. Sumner: Answer the point.

The Hon. R.I. LUCAS: Hold on.

The CHAIRMAN: Order!

The Hon. R.I. LUCAS: I resent the fact that I have made a 10 minute contribution in relation to what I see as an important and critical part of this legislation and the Attorney starts getting testy.

The Hon. C.J. Sumner: I can answer it.

The Hon. R.I. LUCAS: The Attorney says he can answer it. He has had two goes so far and they make no sense in relation to—

The Hon. C.J. Sumner: You are not listening.

The Hon. R.I. LUCAS: It is not because I am not listening; it is because in listening and comparing what you are saying and what the Chairperson of the Teachers Registration Board is saying they do not make any sense. So, one of you is wrong. If the Attorney wants to tell me that the Chairperson of the Teachers Registration Board is wrong, fine, he should get up and tell me that.

The Hon. C.J. SUMNER: I am pleased the honourable member has sat down. I am very concerned to answer the questions and get the situation on the record as quickly as I can. The confusion has come about because I was talking about the effect of the legislation—the mutual recognition principles. The honourable member is referring to a policy which was adopted, as I understand it, by the heads of Government at one of their meetings. I think it was in the Adelaide meeting in November 1991, when this issue was discussed and the principles of mutual recognition endorsed for further work and for the drafting of legislation. At that meeting a whole lot of spin-off issues relating to mutual recognition were dealt with. In the papers that were presented there was a request to Ministers for Vocational Education, Employment and Training, and Ministers for Labour to develop a national approach to the issue of partially regulated occupations and to accelerate the work being undertaken in this area. I understand that the heads of Government, as a matter of policy, then required a review of those occupations which are not registered in all jurisdictions—as a matter of policy; not as a matter of law.

As I understand it, teachers are not registered in all jurisdictions. So, Ministers of Education—and we would have to get an answer from the Minister of Education as to exactly where we are in this, but no doubt that can be obtained if the honourable member wants—are looking to see whether or not teachers' registration is in the public interest, because some States do not have teachers who are registered and some States do. So, if there is a situation around Australia where an occupation is registered in some States but not others, then there is obviously a question whether it is necessary in the public interest. I suppose, in the policy of framework of looking at whether or not we need Government regulation as a matter of policy, Ministers have been requested to look at this issue. However, as a matter of law under mutual recognition, if South Australia—despite those discussions—decided it wanted to maintain its system of occupational licensing in the area of teachers, then it still could. If the rest of Australia decided to deregister all teachers' registration, then we could still maintain ours and we could stop those teachers coming into South Australia to teach.

However, if there is a registration system around Australia, mutual recognition says as a matter of law that we should recognise those qualifications from those States. What all that is doing is concentrating the mind: in the area where there is registration of teachers or occupations, what should be the standards for that registration? But then, in those States where there is partial registration, or indeed no registration of the occupation, heads of Government are saying, 'Look, this is a pretty irrational situation, where some States register and some don't; can't you get together and sort out a uniform approach to it?' One option in sorting out that uniformity is to completely deregulate, obviously. Another option is to regulate, but regulate with standards which are more or less uniform around Australia.

That is what I think is happening. Discussions are going on at the national level. I understand that what the honourable member is referring to is probably those policy discussions. It does not affect the law.

The Hon. R.I. LUCAS: I have not seen what these policy discussions are that the Attorney is now referring to and I am wondering whether he is prepared to make them available to members of the Committee. He is now saying to the Committee that his earlier answers to me were in relation to the law, but some others are aware that together with the discussion about the law there were also agreements and arrangements being entered into between Governments in relation to the professions and maybe in relation to other things as well which are part and parcel of this whole area. We have the law in front of us. I, as a member of this Committee, do not have these other arrangements that his Government is entering into.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: I accept that the Attorney cannot do that. What I am saying is that his intention, if this law passes in some form or other, is to continue with these sorts of agreements and arrangements, obviously. This Committee ought to be aware of what these policy agreements and potential arrangements are. One of the series of questions that I put in the second reading was to have from the Minister of Education here in South Australia and/or the department a statement on where these discussions are.

The Hon. C.J. Sumner: We are getting them.

The Hon. R.I. LUCAS: I would like to see it before I have to vote in relation to—

The Hon. C.J. Sumner: It is nothing to do with this.

The Hon. R.I. LUCAS: The Attorney says that it has nothing to do with this. He and everyone who has spoken today agrees that this is momentous legislation. The only opportunity we have of influencing any part of this debate at the moment is today before the legislation passes. It has been through the other House, and there may well be some passage between the Houses over the coming week, but today, now, is the opportunity for members to understand the implications of the legislation in our own particular portfolio areas. As the shadow Minister of Education and potentially a Minister of Education in South Australia I have an interest in what agreements and arrangements this Government and this Minister currently are entering into with other Ministers and other Governments.

The Hon. C.J. Sumner: I agree.

The Hon. R.I. LUCAS: Well, I do not have that at the moment, and I requested it on Wednesday. We are all part and parcel of trying not to delay unnecessarily the passage of this legislation. I think it is important for a shadow Minister such as me who has an interest in the portfolio of education and for all members, if the Government wants this legislation adopted, to be privy to the policy arrangements and discussions that are going on and to be given an expression of the Government's view in relation to teacher registration or deregistration. I would like to see that before we get out of the Committee stage later this afternoon, and I leave that request with the Attorney-General.

The Hon. C.J. SUMNER: I am advised that the Minister of Education's policy position is that a trained, qualified and competent teaching profession must be assured in the best interests of children and that there should not be any threat to or undermining of standards in the teaching profession. That is the Minister's position. If that is her position I assume she will argue that at national level in discussions that heads of Government have requested. This is not only in relation to the teaching profession. I assume she will argue for the maintenance of a registration system for teachers and for a system of registration where there are nationally agreed standards around Australia. However, if she is unsuccessful, this Mutual Recognition Bill does not do away with the teachers' registration system in South Australia. The Minister cannot by reaching a national agreement do away with that system, even if she wanted to. We could have a situation where all the other Ministers think that teacher registration is not in the public interest, that it is just Government bureaucracy and that we can rely on the assessment of people's qualifications through universities to decide whether they should be teachers and that we do not need another layer of bureaucracy. If the rest of Australia decides that and if South Australia decides that it wants to keep its teacher registration system, then that system enshrined as it is in South Australia's legislation would remain.

However, from a policy point of view there is a debate, and I would have thought that the honourable member as a free trader and a member of the Liberal Party would acknowledge that debate. The debate is: why do we need another layer of Government bureaucracy to register teachers when we already have a system of universities at which people obtain arts, science or education degrees and educational and teaching qualifications—B.Eds and Dip.Eds or whatever? Surely, if we are to decide whether someone is qualified to be a teacher we do not need a teachers' registration board. Surely schools, whether they be Government or independent schools, are entitled to assess the candidates as they come forward. If they have no educational qualifications but have a degree in something that is totally irrelevant—

The Hon. K.T. Griffin: Law.

The Hon. C.J. SUMNER: That is not even irrelevant to teaching these days, because there are legal studies. I suppose there are not too many primary degrees in the universities that are completely irrelevant to teaching these days. If someone came along with a degree that had nothing to do with teaching, presumably they would not be considered to be qualified. This is a legitimate

debate, and I am only putting that forward as a hypothetical question; I am not arguing for the registration or non-registration of teachers, because I do not know enough about it. All I am putting is that there is a legitimate argument, because some States do not register teachers and others do.

The Hon. R.I. Lucas: It is proper for us to be asking you what your Government's attitude is.

The Hon. C.J. SUMNER: Yes, and I have just given it to you.

The Hon. R.I. Lucas: You are saying that you want competent teachers. Do you want the registration board?

The Hon. C.J. SUMNER: I believe that it is the policy of the South Australian Minister of Education to continue with a teachers' registration system.

The Hon. R.I. Lucas: You say, 'I believe'; I would like to know.

The Hon. C.J. SUMNER: I will have that matter confirmed. The honourable member can take it that that is the situation unless I tell him otherwise soon. By all means he can put these questions to me, but they are not actually relevant.

The Hon. R.I. Lucas: But they are.

The Hon. C.J. SUMNER: They arise in the context of mutual recognition, but whatever our view is on the topic of teachers' registration does not affect what this Bill does for the reasons I have outlined.

The Hon. K.T. Griffin: And, *vice versa,* this Bill may well affect what happens in the teaching area once the policy decision is taken.

The Hon. C.J. SUMNER: It will only affect it if there is registration of teachers, but this Bill will have no affect on South Australia's teachers' registration system. If this Government or the honourable member, when or if he becomes Minister, decides to abolish teacher registration, we will have to come back to this Parliament to do so. This Bill does not touch State law on teachers' registration. However, there is a policy debate occurring about whether teachers' registration should be kept, and I have outlined that in general terms. I know nothing about it; I am simply putting the argument. I am not putting a policy position. As I understand our position, the State Government supports the continuation of teachers' registration.

The Hon. R.I. LUCAS: Is the Attorney prepared to provide to members of the Committee the policy arrangements or agreements to which he referred earlier in relation to education? I presume they cover other issues as well.

The Hon. C.J. SUMNER: There is no problem with the South Australian Government's position on these areas of partial deregulation around Australia being told to the Parliament. If the honourable member can say which ones he wants to know about, we will give him our position if we have made up our mind, but I repeat: it does not actually affect the Bill; it is a policy issue.

The Hon. R.I. LUCAS: I understood from what the Attorney said in response to an earlier question that they had the law but they also had policy discussions and reached agreements at one of the previous Premiers Conferences where, in relation to, for example, partially registered occupations agreements were reached as to what might or might not be done in the future.

The Hon. C.J. Sumner: There were agreements to examine them.

The Hon. R.I. LUCAS: Were there other agreements like that but not just in relation to partially registered occupations? As the Attorney says, there is the law but this is the discussion associated with the law. Did his Government enter into other agreements with other heads of Government that members of this Committee should be aware of?

The Hon. C.J. SUMNER: I will get copies of the agreement. There are large numbers of partially regulated occupations around Australia, of which teaching is one.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: We can give you our list that we have, if you want.

The Hon. R.I. Lucas: Does that list include your Government's attitude to—

The Hon. C.J. SUMNER: No, it does not.

The Hon. R.I. Lucas: Is there a separate list that indicates your Government's attitude?

The Hon. C.J. SUMNER: No, it may be that the Government does not have an attitude on them yet. These things are all being discussed in relevant ministerial discussions, and the Government's attitude may be conditioned by those discussions. All I can say is that this is not really relevant to the Bill. It is an exercise that has arisen out of the Heads of Government Agreement on Mutual Recognition, but it is a policy: 'We, heads of Government in Australia (Commonwealth, State and Territory), ask you, various Ministers, trade associations, professional occupational associations and what have you around Australia, to look at the partially regulated occupations around Australia and try to come to an agreement whether they should be continued to be regulated or whether they should be deregulated. If they are to continue to be regulated you should look at how they should continue to be regulated and try to get standards which are uniform and therefore easily recognisable around Australia.' That is the policy objective. But none of that can happen in relation to teachers, public entertainment, radiation or health workers, electricity workers, etc.

The Hon. R.J. Ritson: Are gemcutters on the list?

The Hon. C.J. SUMNER: I wouldn't be surprised: you should hope they are not, because you are probably not registered and you are probably operating illegally in that case. The honourable member had better hope they are not on the list. So, on these matters you have to come back to the State Parliament to deal with them. I am not saying that your questions are not legitimate and that you are not entitled to the information. You definitely are, but whatever information you get on these ought not to affect the law, the Bill that we are passing. However, we will get this list and see where we go. Once you get the list you can ask Ministers what the attitude is on the topic.

The Hon. R.I. LUCAS: As I understand what the Attorney has said: in relation to this law and the teaching profession, if this Bill is passed—and the Government's attitude is for the continuation of the Teachers Registration Board—

The Hon. C.J. SUMNER: That is as I understand it.

The Hon. R.I. LUCAS: But if this Government changed its mind and said, for example, that it would have deregulation of the teaching profession, is it the case that this law if passed in this form would not prevent a new incoming Government re-instituting regulation and registration in South Australia for the teaching profession so that we could say that we do not want to accept from all the other States and Territories of Australia inferior teaching product in our schools?

The Hon. C.J. SUMNER: The answer to the honourable member's question is 'Yes', if I understood it correctly, and I will just repeat it. If it is decided around Australia to deregister teachers, if that law is passed in every State Parliament around Australia, including the South Australian Parliament, because of the enthusiasm for deregulation by the existing Labor Government, and an incoming Liberal Government, assuming it makes it, decides that it does not believe in free markets, deregulation and all that stuff and wants to re-regulate teachers, then it can introduce legislation into the Parliament to do that and that will not conflict with the mutual recognition law.

The Hon. R.I. Lucas: It cannot be overridden or anything like that on those sorts of technical, legal—

The Hon. C.J. SUMNER: Not in the circumstances that I have outlined, no.

The Hon. I. GILFILLAN: I can understand the discussion that has occurred between the Hon. Mr Lucas and the Attorney as regards re-registration of teachers if de-registration has been accepted across the country, but taking the scenario that I assume we have now, there is universal registration of teachers in each jurisdiction. However, the draft of the Federal Act that the Hon. Mr Lucas has provided me with varies from the draft that was provided to me by the Premier in this particular detail. I read to the Committee a little while ago section 20—'Entitlement to registration and continued registration'. Subsection (4) in the draft that I read provides:

> ...continuance of registration is otherwise subject to the law of the second State.

I take it that the draft that the Hon. Mr Lucas has has been amended. I believe that the other draft provided to me is a photocopy of the Act, and so this is it, this is the law. It has had added to subsection (4) the following:

> ...continuance of registration is otherwise subject to the laws of the second State to the extent to which those laws;
>
> (a) apply equally to all persons carrying on or seeking to carry on the occupation under the law of the second State, and
>
> (b) are not based on the attainment or possession of some qualification or experience relating to fitness to carry on the occupation.

It is paragraph (b) which is pregnant with meaning. As I understand it, it actually would potentially undermine the standards of a registered teaching profession in South Australia by allowing people from a less rigorous State—that still has registration, mind you, but not up to our qualifications and standard—to come in, and there would be no ability for us in South Australia to prevent them working as teachers, because we cannot move to restrict the continuation of the registration on anything that is relating to 'the attainment or possession of some qualification or experience relating to fitness to carry on the occupation'. It may be that the Hon. Mr Lucas had recognised that before, but I personally think that that really does sabotage a standard which the State may have blithely thought had been locked in place, to make sure that we did have a standard of qualification of teachers practising in South Australia. I understand from this that that would be undermined.

The second point I wish to make concerns the Hon. Trevor Griffin's 'lose lose/win win' argument in general terms as to the whole effect of this particular Bill. It does seem to me that, as the Hon. Trevor Griffin has indicated, if we follow the path that the amendments are leading us, where we as a sovereign State set certain standards, both with goods or with qualifications, those South Australians who are to work interstate or those South Australian products which are to be marketed interstate will have the kudos of actually having passed more rigorous standards or having been trained to higher standards than other States. So, I think it would be to an advantage. If we have goods which are of a certain quality in South Australia I believe it is our right to demand that those be the standards that apply within the State and I see it not as 'lose lose' but certainly as a 'win' with possibly some loss in areas which might be more or less revenge reaction by other States that feel their noses are out of joint, but personally I would be prepared to take that risk.

The Hon. R.I. LUCAS: Quickly trying to scoot through the report of the Committee on Regulatory Reform to Heads of Government, Conference of Premiers and Chief Ministers, Adelaide, November 1991, the report that the Hon. Gilfillan gave me (which I think he got from the Premier), this report notes that the committee notes the valuable work on partially regulated occupations undertaken by the Vocational Education, Employment and Training Advisory Council (VEETAC), and VEETAC's view that the solution in many cases is for these occupations to be deregulated. The committee agreed with this view and recommended that Ministers of Vocational Education, Employment and Training and Ministers of Labour be requested to accelerate this work and report to heads of Government on a possible national approach to these occupations.

I certainly do not need a copy of this for the Committee stage, but is it possible for me to obtain a copy of the valuable work that was done by VEETAC on this issue, if it could be made available to me as shadow Minister? I do not need it today, but I would be interested to read it. In relation to this last reference about the Ministers being requested to accelerate the work and report to heads of Government on a possible national approach, I take it that the Ministers have not yet reported on that matter.

The Hon. C.J. SUMNER: The second matter is what I referred to, namely, that heads of Government had asked Ministers of Education to look at this matter. No, they have not reported to Government. What work they did previously, I do not know, but I certainly have no objection to the honourable member's having that information, and I will refer it to the Minister of Education, Employment and Training and let him have it. I will also make the Adelaide agreement available to the Hon. Mr Lucas and the Hon. Mr Griffin. I can do that by this afternoon, I think, as this Bill obviously will

be going to and fro between Houses. It may inform further debate on the matter.

The Hon. R.I. LUCAS: Can the Attorney clarify that the Hon. Gilfillan's understanding of the issue that he has just raised, section 20(4) of the Mutual Recognition Act, and my understanding (which I indicated during the second reading) is correct: that if we do have this system of mutual recognition and registration between the States, in South Australia you cannot have a situation then of insisting that you must have a two, three or four year teaching qualification to teach in a particular school.

The Hon. C.J. SUMNER: If people are coming from an unregistered jurisdiction then we can insist that, if they want registration in South Australia, they must comply with South Australian provisions—

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: Yes. But if they come from a registered jurisdiction, that is, where there is registration of teachers, then mutual recognition means that we accept in this State, and people are entitled to have accepted in this State, their qualifications to teach, because they have gone through a registration process in the other jurisdiction. What the Hon. Mr Gilfillan says is right, and you could have some absurd situations where you have very high and very low standards. However, it is a chicken and egg situation. If you try to have those standards harmonised by a process of consultation over time, I can assure you that you will be here for years and years and years.

The Hon. R.J. Ritson: It took about 15 years discussion for the States to agree on medicine.

The Hon. C.J. SUMNER: That would be right. However, mutual recognition is the spur to get together and get agreement. So, if you have a situation with very high qualifications and very low qualifications—and I do not think that does apply in very many instances. Dried fruits is one where it does apply, but generally it does not. Standards are sort of the same around Australia. They certainly are in the law—then Governments and professional bodies, trade associations, all work to harmonise those standards around Australia.

So, without mutual recognition it would not happen: with mutual recognition you run the risk of some situations of significantly differing standards, but with mutual recognition there is a very strong impetus to get those standards agreed and harmonised around the nation.

Amendment carried.

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

Page 2, lines 1 to 3—Leave out subclause (2).

That is related to the amendment I propose to clause 4, which deals with application of the law rather than with adoption. The debate we have had, even though it has been a reasonably long one, has been useful because it will probably circumvent our having to debate all these other issues and amendments at length.

The Hon. C.J. SUMNER: I take this as a test case on the application of laws approach of the Hon. Mr Griffin. We strongly oppose this. We have had the debate: the Hon. Mr Griffin and the Hon. Mr Gilfillan support this approach. We oppose it. I will not specify the reasons, but if we lose on the voices, we will divide on it.

The Committee divided on the amendment:

Ayes (9)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, I. Gilfillan, K.T. Griffin (teller), R.I. Lucas, Bernice Pfitzner, R.J. Ritson, J.F. Stefani.

Noes (6)—The Hons T. Crothers, M.S. Feleppa, Anne Levy, R.R. Roberts, C.J. Sumner (teller), Barbara Wiese.

Pairs—Ayes—The Hons M.J. Elliott, J.C. Irwin, Diana Laidlaw. Noes—The Hons Carolyn Pickles, T.G. Roberts, G. Weatherill.

Majority of 3 for the Ayes.

Amendment thus carried; clause as amended passed.

Clause 4—'Adoption of Commonwealth Act.'

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

Page 2, lines 4 to 17—Leave out clause 4 and substitute new clause as follows:

4. The Commonwealth Act applies as a law of the State subject to the amendment set out in the schedule.

The new clause is consequential. It applies the Commonwealth Act rather than adopts, which is consistent with the way in which the earlier amendments have been dealt with.

The Hon. C.J. SUMNER: I agree that it is consequential, but I oppose it.

Clause 4 negatived; new clause inserted.

Clause 5—'Reference of power to amend the Commonwealth Act.'

The Hon. K.T. GRIFFIN: I oppose this clause. This is consequential on earlier amendments. Clause 5 refers power to the Commonwealth and I have indicated strong opposition to that.

Clause negatived.

Clause 6—'Approval of amendments.'

The Hon. K.T. GRIFFIN: This again is consequential and I oppose the clause.

Clause negatived.

Clause 7—'Regulations for temporary exemption of goods.'

The Hon. K.T. GRIFFIN: The opposition to clause 7 is consequential.

Clause negatived.

New clause 8—'Review of scheme.'

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

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

8. This Act expires on the fifth anniversary of the day on which it commenced.

The amendment sets a sunset clause for the Act to expire on the fifth anniversary of the day on which it was commenced. In the House of Assembly there was debate about a review of the operation of the legislation. The Premier indicated that there would be a proposition for a review before the expiration of five years. Certainly, the intergovernmental agreement was that there ought to be at least an initial period of five years for which the scheme operated. I propose a sunset clause.

My recollection is that that is what happened in Victoria: that there is a sunset clause to this effect and not just a period of review. In that event, I believe that we ought to follow that rather than merely the review process. A sunset clause makes it incumbent on Governments specifically and diligently to review and make a decision whether or not the scheme should continue.

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

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

8.(1) If the adoption of the Commonwealth Act under this Act is still in effect five years and six months after the commencement of this Act, the Minister must cause a report to be prepared on the operation of the mutual recognition scheme in Australia and the effect of the scheme in South Australia.

(2) The report must be prepared within six years after the commencement of this Act.

(3) The Minister must, within 12 sitting days after the report is completed, cause copies of the report to be laid before both House of Parliament.

The Hon. Mr Griffin's amendment is for a sunset provision involving expiry on the fifth anniversary. My amendment is for a review.

The Hon. I. GILFILLAN: The sunset provision would put up the heat a bit on reviewing this legislation, and I support the Hon. Mr Griffin's new clause.

The Hon. K.T. Griffin's new clause inserted.

New schedule.

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

Page 3—Insert schedule as follows:

SCHEDULE

The Commonwealth Act applies subject to the following amendments—

(a) Strike out section 3 and substitute new section as follows:

Principal purpose

3. The principal purpose of this Act is to promote the goal of freedom of movement of goods and service providers in a national market in Australia;

I will deal with the new schedule on a paragraph by paragraph basis because a number of these issues present differing arguments. Some matters are consequential on others. On the basis of the amendments already moved on the application of the Commonwealth Act, it is necessary to amend the principal purpose of the Commonwealth Act, which refers to paragraph 37 of section 51. I am proposing to refer only to the principal purpose of the Act, namely, to promote the goal of freedom of movement of goods and service providers in a national market in Australia, and that does pick up the essential ingredients of the Commonwealth Act.

The Hon. C.J. SUMNER: I do not want to short circuit the debate, but none of these amendments are acceptable to the Government, as I made clear, because they totally undermine the scheme. This is obviously a matter that will have to be the subject of more discussion at some point. As I understand it, the Hon. Mr Gilfillan's position is that he supports the Hon. Mr Griffin.

The Hon. I. GILFILLAN: Yes, I do, but I cannot claim to have absorbed the implications of every one of these points in the schedule.

The Hon. C.J. SUMNER: You would prefer to hear some discussion on them. My proposition was that as there is going to be a dispute that will continue, the Hon. Mr Griffin can put the amendments *en bloc* and we will then have to discuss them further. However, if the Hon. Mr Gilfillan wants the benefit of an explanation of each of the Hon. Mr Griffin's amendments, that is legitimate and I do not want to stand in the way of that.

The Hon. I. GILFILLAN: We might be able at least to shorten the process a little if the mover of the schedule, the Hon. Trevor Griffin, would indicate which, if any, of these measures are additional to or outside the context of the general debate we have had in the Committee.

The Hon. K.T. GRIFFIN: Perhaps what I should do as expeditiously as is possible in the circumstances is go through all the paragraphs now that relate to substantive issues. Then, if there are any that the Hon. Mr Gilfillan needs to pursue further, we can do that in relation to particular paragraphs. However, the scheme of the schedule is to amend the Commonwealth Act that we are now applying under the amendments that have been passed as a law of South Australia.

I am proposing amendments to that Commonwealth law in a number of ways. For example, paragraph (*a*) changes not the spirit but merely the drafting of section 3 of the Commonwealth Act. That is necessary because we have moved away from an adoption of the Commonwealth Act and a reference of power. The amendments in paragraphs (*b*) and (*c*) are consequential upon a later provision which deals with deemed registration. 'Deemed registration' relates to occupations, and focuses upon the fact that when there is a registration regime in South Australia and there is one in another State in the same occupational area the person interstate wanting to practise here gives a notice. Then there is deemed registration from the point of the notice being given in South Australia, even though the registration authority has a month within which to decide what it will do with that registration application. If nothing is done then the person is deemed to be registered.

I propose to remove the concept of deemed registration. That is the focus of paragraphs (*b*), (*c*) and some later paragraphs. In paragraph (*d*) I seek to provide that the tribunal which deals with appeals from registration authorities means a court or tribunal authorised by regulation and not the Commonwealth Administrative Appeals Tribunal, as is provided in the Commonwealth Act. I have a difficulty with the Commonwealth Administrative Appeals Tribunal in all cases being the final body of appeal in relation to declarations of equivalence. I have made that point specifically in relation to the Supreme Court and legal practitioners, although I do not think that will be significant because of the way legal practitioners are seeking to break down barriers.

However, this amendment will allow the State, by regulation, to prescribe a particular tribunal as the appeal tribunal. That then becomes a matter for review under the Subordinate Legislation Act.

Paragraphs *(e)* and *(f)* are consequential amendments and paragraph *(g)* is very largely consequential. Paragraph *(h)* is not so much consequential, but relates to section 15 of the principal Act, which deals with temporary exemptions for a period no longer than 12 months; that is, temporary exemptions in relation to goods or laws to which section 15 applies. I am proposing that there be a capacity to give a further extension by regulation of this State.

Paragraph *(i)* deals with section 16, and I think that that is consequential. Paragraphs *(j)*, *(k)* and *(l)* seek to focus upon registration being the subject of an application, but not including power for temporary

registration or interim registration, and not allowing an automatic registration where the attainment or possession of some qualification or experience relating to fitness to carry on the occupation is nevertheless part of the code in South Australia.

Paragraph *(m)* is in a similar context in relation to registration and continued registration. It is the provision to which the Hon. Mr Gilfillan and my colleague the Hon. Mr Lucas specifically referred. Paragraph *(n)* relates to interim arrangements. That is then consequential on matters to which I have already referred, as is paragraph *(o)*.

Paragraph (p) is consequential on a later amendment I propose. An earlier provision allows Ministers to make a declaration as to particular occupations which are regarded as equivalent at a governmental level—not necessarily a parliamentary level—and in those circumstances the tribunal is not permitted to make a decision which is contrary to that declaration. Later I propose that so far as South Australia is concerned such a declaration is made by regulation.

'Review of decisions' in paragraph (t) is consequential upon matters I referred to earlier where a regulation of this State can determine who is to be the tribunal for the purposes of review of a local registration authority decision. All of the other paragraphs are largely consequential, except the last paragraph (ff) relating to quarantine. I expressed in my second reading speech a concern about the exemption in schedule 2 of the Commonwealth Act which appeared to leave open the opportunity to bring products into South Australia in defiance of State-wide quarantine regulations unless there was a particular State or area substantially free of a particular disease, organism, variety, genetic disorder or other similar thing. In other respects, it seems to me that there are other issues which need to be addressed before the issue of the application of quarantine laws applies. Under the schedule, we should exempt from the operation of the law relating to quarantine and each case is then addressed on its merits. That is a brief overview.

The Hon. I. Gilfillan: The draft of schedule 2 1 have, point 1, is the Beverage Container Act 1975 in South Australia.

The Hon. K.T. GRIFFIN: Paragraph 1 of schedule 2 of the Act, which is what I have from the Parliamentary Library, refers to a law of a State relating to quarantine. So, it is a permanent exemption relating to goods: 'A law of a State relating to quarantine is therefore permanently exempted to the extent that—' and then there are four paragraphs.

The Hon. I. Gilfillan: That is right. It is number 2 in my schedule.

The Hon. K.T. GRIFFIN: It is number 1 in the Act.

The Hon. I. Gilfillan: Is 'beverage container' in your schedule?

The Hon. K.T. GRIFFIN: Yes; it is still there. Mr Acting Chairman, that is a very quick overview. The Hon. Mr Gilfillan, I think, indicates support for all of those amendments, so it might facilitate consideration.

The Hon. C.J. SUMNER: I make clear that the Government is opposed to these; it cannot accept them. I just reiterate that this would undermine the scheme in a way which I am sure would be unacceptable, not just to this Government, but almost certainly to the other participating Governments. However, if this is the way we are going, there is nothing I can do about it. I just hope that commonsense prevails before the matter is finally dealt with in the House.

New schedule inserted.

Title.

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

Long title, page 6 to 10—Leave out all words in these lines and substitute new long title as follows:

An Act to apply the Mutual Recognition Act 1992 of the Commonwealth as a law of the State so as to enable the recognition of regulatory standards throughout Australia regarding goods and occupation.

Amendment carried; title as amended passed.

Bill read a third time and passed.

[Sitting suspended from 1.8 to 2.15 p.m.]

QUESTION TIME

LOTTERIES COMMISSION

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

Leave granted.

The Hon. R.I. LUCAS: Last November in another place the Treasurer made a ministerial statement regarding the Lotteries Commission and the issue of insurance. The statement followed a question asked during the 1992 Estimates Committee hearings by the member for Hayward. The Treasurer stated that the issue of the Lotteries Commission and insurance raised during Estimates was only one of a number of issues that the Auditor-General had identified as warranting examination in his interim audit for 1991-92. The issues he had identified included conflict of interest, operating practices, insurance, capital expenditure and internal audit.

In his ministerial statement the Treasurer indicated that a letter dated 19 October 1992 had been received from the Auditor-General. In this he stated that he was satisfied with the response of the commission and that he did not consider it necessary to provide a report on those matters to the Treasurer and/or the Parliament. However, the Treasurer went on to say that, while the commission and the Auditor-General had expressed satisfaction, he had referred all correspondence to the Attorney-General for his examination. My question to the Attorney-General is: what were his findings following the examination of that correspondence and why has it taken five months to make a public statement on the matter?

The Hon. C.J. SUMNER: I have not made any findings on the matter, because it was referred to the Crown Solicitor in my office and, as I understand it, he still has the matter in hand. I will see whether I can get an up-to-date report on it and bring back a reply, but there has been no determination on the matter as far as I am concerned. I received it; it was given to the Crown Solicitor. I know that certain inquiries have been made by investigators in the Attorney-General's Office, but I

will see whether the Crown Solicitor can give me any further information which I can convey to the Council.

ECONOMIC STATEMENT

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question about the Economic Statement.

Leave granted.

The Hon. K.T. GRIFFIN: In the Economic Statement there is reference to a ministry of justice being created and to the fact that the Attorney-General would be making a statement on the issue. If this new department is to include Correctional Services, as some suggest it may, the department which is responsible for administering penalties, including prisons, it seems that there is likely to be significant conflict between the role of the Attorney-General, on the one hand, and responsibility for prisoners, on the other, some of whom will be on remand and subject to the prosecution process for which the Attorney-General has ultimate responsibility.

There have also been suggestions that the police might be brought within this super ministry and, if that occurs, that, too, raises questions of propriety and conflict. My questions to the Attorney-General are:

1. Is this a move back to the 1970s concept of a wide-ranging department similar to the Department of Legal Services but with even greater responsibilities?

2. What functions will be in the new department? Will it include functions such as correctional services and police and, if so, how will obvious issues of conflict between, on the one hand, the constitutional role of the Attorney-General, who is responsible for prosecutions, and his responsibility for police investigations, incarceration and administration of penalties, on the other hand, be resolved?

The Hon. C.J. SUMNER: The structure of the Justice Department is still to be determined. That matter will be looked at over the next few weeks. The Australian Institute of Criminology conducted a seminar or conference in, I think, Canberra early this week at which the role of justice departments was looked at as well as their appropriate composition. I intend to look at the results of that conference, which was attended by the Chief Executive Officer of the Attorney-General's Department, to see what is the optimum structure for a justice department. I do not share the fears of the honourable member about conflict, because I think problems of conflict have been significantly resolved following the establishment of the Independent Courts Authority and an independent DPP.

The Hon. K. T. Griffin interjecting:

The Hon. C.J. SUMNER: Well, ultimately, of course, but I do not see that that is a difficulty. I do not see that there is a natural conflict between the Attorney-General and the Department of Correctional Services. There may be a problem of conflict between police and the Attorney-General; however, as I said, following the establishment of the Director of Public Prosecutions it may be that that is no longer a problem either. At the Commonwealth level, these functions are all contained within the one department (the Department of Justice). It is certainly the trend around Australia to—

The Hon. R.I. Lucas: Do they run the gaols?

The Hon. C.J. SUMNER: Except gaols. All the other functions are carried out within the Justice Department, including the police, the Attorney-General, responsibility for the Legal Services Commission and the courts, and the DPP. All those things are administered within the one department, and they do not see any problem with it.

The Hon. K. T. Griffin interjecting:

The Hon. C.J. SUMNER: It has been in place for three or four years, and I do not see that there has been any problem. Two Ministers are responsible for that department: the Attorney-General, who is the senior Minister, and a Minister of Justice. The Attorney-General has traditionally had responsibility as part of his role for law reform and corporations law and, I suppose, for criminal prosecutions, and the Minister of Justice has looked at legal aid, police, etc. So, they have divided the roles at the Commonwealth level. However, the argument about reducing the number of departments is about trying to ensure that services to the community are maintained while bureaucracy is reduced. That is the rationale behind it in simple terms, whether it be the Justice Department or other departments.

I think these issues can be resolved. I do not, in any event, believe that there is a major issue of conflict between the Attorney-General and corrections, although there may be in other areas. If the honourable member wants to take a purist view of it, there is conflict anyhow, probably a more fundamental conflict than the ones he has mentioned, because the Attorney-General is responsible for the courts and also for prosecution policy before those courts. If we are going to talk about conflict, that is probably the most stark conflict you could point to and yet we have accepted it around Australia for many years, including in South Australia, and it has been accepted because it is one of those things that has grown up: the conventions relating to it are accepted; people understand about the independence of the judiciary and the respective roles of the Attorney-General.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: They are certainly separate departments but it is the same Minister, so the Attorney-General is responsible for the Court Services Department and for appointing judges. At the same time, the Attorney-General is the titular head of the public prosecution process, so there was already a conflict, in any event. These issues will have to be looked at: what departments will be brought in under a justice department will be looked at. That is what we intend to do over the next few weeks and a further announcement will be made.

The Hon. K.T. GRIFFIN: Mr President, I have supplementary questions. Is it to be taken from the Attorney-General's answer that the Department of Justice will definitely occur? Can he indicate, if it is definitely to occur, when it is likely to be established? Is it suggested from his reference to the Federal situation where there are two Ministers responsible for the one department that that is a possibility for the way in which a new Ministry of Justice in South Australia might be structured?

The Hon. C.J. SUMNER: The answer to the first supplementary question is yes, that definitely will occur. The answer to the second is sooner rather than later. Obviously, the process of bringing departments together is not something that can be done overnight, but the decisions and procedures to do it will be set in train shortly. As I said, the exact structure of it will be resolved in the next few weeks, and then I would expect the process to start. As to ministerial responsibility, that will have to be looked at, but if you are going to go into a situation of contracting departments, as they did at the Commonwealth level, I do not see a problem with there being Ministers responsible for different aspects of that department's activities. You still need a Minister that is responsible for the department and the administration of it, but there is no problem under this proposal with another Minister being responsible for certain of the policy aspects and administration of the department. That is exactly what they do at the Commonwealth level, as I have described.

The Hon. R.1. Lucas interjecting:

The Hon. C.J. SUMNER: We do not need a senior and junior. There is no need for that, as long as you have—

The Hon. R.I. Lucas: Who is the boss then, ultimately? Don't they have seniors and juniors?

The Hon. C.J. SUMNER: They do have seniors and juniors, although that is not always the case. There have been Ministers at the same rank with responsibilities in the one department, and I think at the Commonwealth level that has caused some difficulties in some of the departments. However, the overall experience at the Commonwealth level is that it has been a desirable development.

The Hon. R.I. Lucas: Do you have one person in charge clearly, though?

The Hon. C.J. SUMNER: I do not think that is necessarily the case. I think it is possible, with a structure like this, to designate Ministers responsible for particular aspects of the department, and I do not see a problem with that. You might have a head of a department responsible to a Minister, but then there are other aspects of the department which are discrete in policy terms and in administration terms and which can be dealt with by another Minister. It can be done and has certainly been done at the Commonwealth level. It can be done here, I believe. Whether it will be or not, or whether it needs to be, is what we have to look at. In a State like South Australia I do not know that it does need to be done, but I think it can be, and they are the issues we have to sort out over the next few weeks.

SCRIMBER

The Hon. L.H. DAVIS: I seek leave to make an explanation before asking the Attorney-General, as Leader of the Government in the Council, a question about Scrimber.

Leave granted.

The Hon. L.H. DAVIS: In July 1991, nearly 21 months ago, the then Minister of Forests, the Hon. John Klunder, announced that the Government was withdrawing support for the Scrimber project. Mr Klunder admitted that at least $60 million had been lost on this ill-fated, ill-advised venture into high risk timber technology which all private sector timber companies in Australia had rejected.

The South Australian Timber Corporation and SGIC, each with a 50 per cent interest in Scrimber, had blown around $30 million each on Scrimber from the time the project was given the green light in 1986. The Liberal Party, as early as September 1987, publicly warned that the technology was high risk and that it could result in massive losses to South Australian taxpayers.

In the early days, the Scrimber project was apparently headed by a fitter and turner, and when professional management was finally employed in mid 1988 the magnitude of the problems became obvious. Mr Graeme Higginson, who had been Chairman of the South Australian Timber Corporation since June 1988, along with other people involved in the project, announced over 20 different start up dates for the Scrimber project which was publicly opened by then Premier Bannon just days before the 1989 State election. However, the project never started. When the plug was finally pulled on the Scrimber project the gates were locked and the now massive Scrimber building, which would house many, many indoor tennis courts, remains empty.

In November 1991 Mr Higginson announced that there were six or seven parties interested in the Scrimber project. During 1992 he continued to say that there were many parties interested in the Scrimber project. Mr Higginson, with other SATCO executives made a memorable and lavish overseas trip in early 1992 which cost around $42 000, with accommodation and other expenses around $450 per person per day, and that was during the off season. This included a visit to Disneyland, presumably because Mickey Mouse, Daffy Duck or Goofy might have been interested in Scrimber! I asked a series of questions about this trip on 14 October 1992 and received an answer many, many months later. The answer claimed that the purpose of the trip was not to sell the Scrimber product—which, of course, was not surprising. The answer stated:

The interest of the organisations visited—and they were in Asia and North America—

lies rather in their becoming licensed producers in the future and therefore maintenance of such contracts and confirmation of the extent of their ongoing interests were regarded as critical by members of the Scrimber consortium if they were to continue to try and develop the technology for the benefit of the State.

This answer is laughable. I also visited timber groups in North America in early 1992, shortly after Mr Higginson had been there, and I in fact visited some of the timber groups which he had seen. They were well aware of the Scrimber project and it was described as old hat technology with no chance of commercial success. The answer was also laughable because, of course, there was no Scrimber product to sell so quite obviously how could organisations be interested in becoming licensed producers when no Scrimber had ever been produced? The Scrimber consortium led by the South Australia Timber Corporation and SGIC had pledged not to spend any more money on the Scrimber project when they shut the gates in 1991, so how can the answer to my question say they were to continue 'to try and develop the technology for the benefit of the State'.

During 1992 Mr Higginson has continued to claim that there are several parties interested in the Scrimber project, and I understand this claim has been made recently to at least one journalist. There is justifiably a growing suspicion in timber industry circles that no such interested parties exist. Twenty-one months after the Government has locked the gate there has not been one announcement, any movement or any sign of progress. It is stretching credibility to believe parties would remain interested in a defunct and discredited process for a period of 21 months after the Government closed the gates on the Scrimber factory. The bizarre long running saga of Scrimber would be laughable if it were not so serious. The South Australian Timber Corporation and SGIC, not to mention the South Australian Government, has an enormous credibility gap over Scrimber, and of course the taxpayers of South Australia have been badly scrimbered.

Will the Minister confirm that in fact there are now no parties seriously interested in taking over the Scrimber project from the joint venture partners SATCO and SGIC? If there are parties still interested, when is an announcement likely to be made, and what financial consideration, if any, is likely to result from the sale of Scrimber?

The Hon. C.J. SUMNER: I will refer the question to the appropriate Minister and bring back a reply.

REHABILITATION

The Hon. R.J. RITSON: I seek leave to make a brief explanation before asking the Attorney, as Leader of the Government in the Council, a question about rehabilitation.

Leave granted.

The Hon. R.J. RITSON: I begin by offering a copy of a letter to the Government, which it will have shortly, and that will alleviate the necessity of naming the principal players in the Council. The letter concerns a patient who suffered a moderately severe sprained neck in an accident last year and I want to outline the pathology in this sort of situation. At the time of the injury, there is, at the microscopic level, disruption of the ligaments in the neck and muscle spasm of the surrounding neck muscles, and the treatment is to rest the neck in a collar. After several weeks, when the healing process has occurred, one is left with a situation where, at the microscopic level, the ligaments have some scarring, contraction and limitation of movement in them, and the muscles, which were rested, are weakened.

Furthermore, other muscles in the body suffer stress and become painful because immobilisation in the collar causes an altered posture, and it is not until the whole body can be used in a normal fashion for some time that this process of recovery is complete. At present, the Government of South Australia is obstructing the recovery of that patient. The patient is a very sensible and positively oriented woman who wishes to return to work. It is understood by her and by her rehabilitationists that there will be a period of time during which, when she does her work, she will suffer aches and pains and will tire easily, but it is necessary for the normal recovery process that the natural function of using the body at the normal tasks be instituted and, in due course, the full function will return.

She has been given a certificate which has been forwarded to the Queen Elizabeth Hospital saying that she is fit for partial work. She is in the hands of an occupational health service called ASE, which is the source of the letter I have just passed over, and it has recommended a work hardening return to work, staging from three or four hours a day up to a full eight hour day. The Queen Elizabeth Hospital has refused to allow her to return to work until she is fully fit for all duties. It would not accept her for part-time work graded to full-time work over a period of weeks.

The other player is SGIC. As long as the Queen Elizabeth Hospital refuses to take her rehabilitatively into a work hardening process, she is a continued full work loss drain on the Australian taxpayer who, as all members know, has had to subsidise SGIC in recent times. It seems quite ludicrous for one State instrumentality in effect to say to this person 'You cannot be rehabilitated; you stay at home doing nothing. It does not matter if you develop an invalid mentality. It does not matter whether you never get back to work: we are going to protect our budget', and another State instrumentality, the SGIC, saying 'We want to get you back to work to lighten the burden on the taxpayer.'

Indeed, SGIC has offered to subsidise the salary of this woman in this process. Because this involves two departments it requires third party Government intervention, because as long as you have one Government instrumentality saying 'I do not want to know you' and another saying 'We want to get this person back to work and we will pay for it', you have a ludicrous result and an *impasse.* My question to the Government is: will the Premier cause officers of his department to have discussions with both these instrumentalities so as to resolve the *impasse* that is described in that letter?

The Hon. C.J. SUMNER: I think it is better if I refer this to a Minister who is able to take some responsibility for it. It would be better if I refer it to the Minister of Health, Family and Community Services and ask him—

The Hon. R.J. Ritson: He has got half of it.

The Hon. C.J. SUMNER: I will refer it to the Minister of Health, Family and Community Services and to the Treasurer to see what can be done about the problem that the honourable member has outlined.

HOUSING TRUST OFFICE ACCOMMODATION

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Minister representing the Minister of Housing, Urban Development and Local Government Relations a question about the South Australian Housing Trust.

Leave granted.

The Hon. J.F. STEFANI: In 1991 I was advised by the former Minister of Housing and Construction (Hon. Kym Mayes) that negotiations were continuing for the establishment of a tax office building on the Angas Street site previously occupied by the South Australian Housing Trust. In an answer to a question that I had raised, the

Minister further advised me that the report by Price Waterhouse Urwick on the triennial review of the Housing Trust was in its final stages but had not yet been received by the Government. I am also informed that the South Australian Housing Trust periodically calls by public notice or invitation for an expression of interest from crash repairers to submit details of their expertise to undertake crash repair work on vehicles owned and operated by the South Australian Housing Trust. My questions are:

1. Will the Minister advise the total amount paid by the Housing Trust to lease the premises at Riverside, including rent and all other charges from 1 June 1989 to 31 March 1993?

2. What is the amount paid by the Housing Trust so far for holding costs associated with the old headquarters at Angas Street to 31 March 1993?

3. Will the Minister advise whether the Government has made any progress or finalised any sale on any development proposal for the Angas Street site?

4. Will the Minister provide details of the selection criteria used to select crash repairers to undertake vehicle repairs for the Housing Trust, including the names of the successful tenderers chosen by the Housing Trust for the past six years, and also release the Price Waterhouse report to Parliament?

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

MAMMOGRAPHY

The Hon. BERNICE PFITZNER: I seek leave to make a brief explanation before asking the Minister representing the Minister of Housing, Urban Development and Local Government Relations a question about mammography.

Leave granted.

The Hon. BERNICE PFITZNER: The Mammography Unit, which is a unit for taking X-Rays to screen for early cancer of the breast, is to be in Coober Pedy between 17 and 22 of May this year. The proprietor of the Opal Cutter has requested a mammogram as she has a strong family history of cancer of the breast, has had several biopsies for lumps in the breast which have proved to be benign (or non-cancerous) and she is 39 years of age.

The unit has refused for her to be included in its May screening program as the cut-off point for eligibility is based on age, and that is 40 years. This means that this woman has to take time off from her business and have the added expense of travel and accommodation to be checked in Adelaide. Being a person from a remote area she will be able to claim on Government benefits for part of the travel and accommodation. All this can be overcome by the Mammography Unit's including her in its program when it is in Coober Pedy. My questions to the Minister are:

1. What are the criteria of the Mammography Unit for a person to be included in the screening program?

2. If age is the only criterion, will the Minister look into adding supplementary criteria, for example, including women with high risk factors contracting the disease?

3. This particular case has the factors of being one year from the age deadline; of having a strong family history of breast cancer; of having previous benign lumps in the breast; together with the remoteness of her location. Most screening programs would include her. Will the Minister look into this person's being included in the screening program before 17 May?

The Hon. BARBARA WIESE: I shall be happy to refer those questions to my colleague in another place. Perhaps I can take the liberty of suggesting that there might be another criterion added to the list put forward, that is, persons living in remote areas and the difficulties they experience in gaining access to health services. However, I may be overstepping the mark with that suggestion, but it seems to me that a person living in Coober Pedy has many additional problems to face in seeking health care than someone living closer to the metropolitan area. I will refer the honourable member's question to my colleague and bring back a reply as soon as possible.

ECONOMIC STATEMENT

The Hon. PETER DUNN: I seek leave to make an explanation before asking the Attorney-General, representing the Treasurer, a question about the Economic Statement.

Leave granted.

The Hon. PETER DUNN: The Economic Statement makes reference to enterprise zones. It is clear in what it says but it is a little confusing. The statement says that assistance will be given to the zones in the form of relief from taxes, charges, regulations and approvals. It says that there will be a 10-year tax holiday, including exemption from payroll tax, FID, bank account debits tax, land tax and stamp duties, etc, and concessional electricity and water charges will be negotiated.

It goes on to say that in the case of the current occupants of Technology Park and Science Park the assistance will apply to all new and expanded activities which meet the eligibility criteria. The areas that are talked about are the MFP Gillman site, a site, near Whyalla, at Port Bonython, Technology Park and Science Park. Already there is jealousy throughout the State in areas that have not been included. How will the jealousy be dealt with in Technology Park and Science Park when the people who are already there will not be eligible for the concessions that are included in the statement?

A number of people have left Technology Park and Science Park, either because they finished their job or it has become uneconomic for them to stay there. My questions really are: will there not be jealousy between new people coming into Technology Park and Science Park and those who are already established there? Secondly, how much relief will be available from payroll tax, which I understand is about 6.1 per cent? Will it be in total or will it be in part?

The Hon. C.J. SUMNER: The Economic Statement set out the principles. Obviously, the administration of those principles will be done by the relevant Government

department or authority, in this case the Economic Development Authority, and I am sure that further information will be issued setting out the criteria that companies need to meet before they qualify for the tax exemptions, etc.

I cannot answer the question personally whether or not it is full remission of payroll tax. There will need to be guidelines and they will be promulgated. The question of jealousy as between one region and another or involving companies within particular regions and questions of equity between different companies will have to be looked at on a case by case basis.

EDUCATION, EMPLOYMENT AND TRAINING DEPARTMENT

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Minister of Public Sector Reform a question about the new Department of Education, Employment and Training.

Leave granted.

The Hon. R.I. LUCAS: One of the decisions announced in the Economic Statement was that there would be a new Department of Education, Employment and Training that would incorporate the current Education Department, the Department of Employment and Technical and Further Education, the new Vocational Education, Employment and Training Authority, the Children's Services Office and State Youth Affairs.

The current arrangements, as I understand them with the department or the Minister of Education, Employment and Training, Ms Lenehan, is that Dr Ian McPhail is the CEO and also the overall coordinator, which I think is the phrase the Government is using, and underneath that position we still have recognition of the CEOs as we understand them to be under the Government Management and Employment Act. Ms Schofield, CEO of the Department of Employment and Technical and Further Education, retains her status and position as head of that department but, nevertheless, within that current arrangement Dr McPhail is the boss and takes on the extra responsibility and remuneration, I guess, of coordinator.

My questions to the Minister of Public Sector Reform are: under the new arrangements, does the Government intend, as one could logically interpret it, that there will be one department and there will be one CEO underneath that arrangement so that in this case Dr McPhail, one would presume if he were successful, would remain as the CEO of the new department, and the position of coordinator might, as envisaged by the Minister, disappear as a concept in public sector administration under the new arrangements? What are the arrangements in this case in relation to the current CEO of the Department of Employment, Technical and Further Education? I do not expect the Minister to have this information available now, but I ask if he can bring it back. What is the length of her contract, and what arrangements will be made about the current CEO of that department under the new scheme that the Premier has announced in the Economic Statement?

The Hon. C.J. SUMNER: The position ultimately is that there would be one CEO for each of the 12 departments that the Premier has announced.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: There would be no need then for the coordinators: there would be 12 CEOs, under the scheme that the Premier has announced, by 30 June next year. The advantage of that is that one has a chance to have policy issues resolved within like minded departments, instead of having different departments giving different policy advice. We would have a CEO initially responsible for the handling of those policy issues and the administration of policy and programs in the department, and we would virtually have an executive of the State Government of 12 CEOs.

Under each department will be business units of various kinds carrying out the functions that are currently performed. Obviously, there has to be a transitional period which deals with the CEOs of those departments or agencies that will be incorporated into a bigger agency.

At the Commonwealth level, I understand they handled this matter by the designation of these people as associate chief executive officers. Obviously they have contracts with the Government and maintain their salary contract and so on. However, ultimately, when the process is completed there would be 12 CEOs.

How one deals with the circumstance in each Government department is a matter that has to be negotiated, and that is a process that will occur, at least in relation to the first three departments that have been nominated, and then in relation to the others over a period of time until 30 June next year.

The Hon. R.I. LUCAS: As a supplementary question, if it is envisaged that the position of coordinator, because of the arrangements, no longer needs to exist, is it the Minister's intention that the increases in salary that were given to those persons taking the positions of coordinators would be negotiated back to the average level of other chief executive officers as they are no longer coordinating departments? Secondly, I leave on notice the question of whether the Minister is prepared to bring back an answer in relation to the current contractual arrangements of the current Chief Executive Officer of the Department of Employment, Technical and Further Education. Thirdly, in relation to this particular area—and the Minister may well have to bring back a reply at a later stage—is there an intention of any amalgamation of the legislation that currently exists in this new area? As the Minister would know there is an Education Act and a Technical and Further Education Act with different requirements.

I think it would perhaps be unusual if we had the one department, again, having separate pieces of legislation. Can the Minister indicate what thinking he or the Government has had so far in relation to, I presume, therefore, the abolition of the TAFE Act and perhaps its rationalisation or amalgamation with the Education Act?

The Hon. C.J. SUMNER: In the case of the last question, the question of bringing together legislation is a matter that would be determined on a case-by-case basis. I do not think it necessarily follows that because we have one department we necessarily need just one Act. I think more than one Act in relation to a department can still be

administered. In fact, most departments have more than one Act to administer. So, I do not see that the bringing together of legislation is necessarily a high priority, but it may be in some departments. It may be a good thing to do in some areas. That is something that the new departmental head and Minister would have to look at.

As to the question of coordinators' salary, I do not imagine that they will be renegotiated in the case to which the honourable member is referring, because, effectively, the coordinator if it happens to be the same person, would become the head of the department, which included all the departments that he was coordinating before. So, if one is looking at it from a work value situation, I would have thought that whether one is a coordinator or head of an amalgamated department one is still performing the same or similar functions. In fact, as head of a department one may well be doing more than one did as a coordinator and, therefore, may be able to bid for a higher salary.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: As the departments are brought together attention will have to be given to who is the CEO and arrangements will have to be entered into-contracts, and so on. Under the present arrangements they are determined by negotiation with the individuals concerned. I might add that our CEO packages in South Australia, even for the most highly paid, are well below those in other States. As I understand it, the honourable member's colleagues in Victoria are throwing around packages of $250,000 for various jobs in some of the departments that they have brought together over there.

In fact, it sounds pretty attractive to get out of this job. I do not know whether the Victorian Government would look very favourably on having a former Attorney-General from South Australia taking one of those jobs. Perhaps members—

Members interjecting:

The Hon. C.J. SUMNER: Sure, but it was not a Liberal Government; it was a Labor Government. However, if members want to get rid of me a lot may be they might like to suggest to their Victorian counterparts that I am available and give me a reference.

ECONOMIC STATEMENT

The Hon. K.T. GRIFFIN: I seek leave to make an explanation prior to directing a question to the Attorney-General on the subject of the Economic Statement.

Leave granted.

The Hon. K.T. GRIFFIN: The Economic Statement states:

> There will be real reductions in total net State outlays of 1 per cent *per annum* for the next three years. This will involve savings of $230 million in 1993-94, followed by further savings of $177 million in 1994-95 and $50 million in 1995-96. Reductions in outlays in 1993-94 are to be spread across all Government agencies.

The statement also makes reference to the 3 000 public sector employees who will be separated from their employment.

Last week on 17 April, the *Advertiser* reported that the State Government had decided to appoint another Supreme Court judge to fill the vacancy caused by the death of Justice White. The reported cost of this decision is $520 000. This comprises the judge's salary, $143 129; superannuation for the judge, $51 670 a year; a judge's car, $8 400; fringe benefits tax for judge's benefits, $2 000; and four support staff costing $122 800, with the balance comprising sundry office, travelling and other expenses. My questions to the Attorney-General are:

1. Is the appointment to proceed in view of the Economic Statement requirements about real cuts and separations of public sector employees?

2. Would it not contribute significantly to the cuts proposed in the Economic Statement by not making the appointment?

3. Would it not assist with meeting the 3 000 target for public sector employee separations for the four support staff also not to be appointed?

4. Will not public sector employees who are to be retrenched be less sympathetic if they realise their jobs are cut but $500 000 is to be spent on a judicial appointment? In other words are not the Government's priorities wrong?

The Hon. C.J. SUMNER: It is not that the Government is appointing a new Supreme Court judge. The Government has taken an in principle decision to replace a Supreme Court judge who died. The Supreme Court judge, had he not died, would have been still been in office for another couple of years. So, we are not making the appointment of an additional position: we are filling a vacant position.

That is a legitimate question to ask: whether it should be filled. The Government has taken the view, in principle, that it should be. Certainly, the Chief Justice made representations that it should be filled, and I am sure that is no surprise to the honourable member.

I think in time we are going to have to look at a reduction in judicial numbers, and this was foreshadowed in any event when the courts package went through. However, for the moment, the Government felt that the Supreme Court vacancy should be filled, and that decision has not been changed.

I can understand there being some concern if it was a new position being added at that cost, but it is not. It is a replacement of a position and, while our court lists are certainly in reasonable shape at the present time—the most recent information I have is that the number of processes issued in the courts has increased again after a drop-off for some months—as members know, certainly the Hon. Mr Griffin, if we do not keep on top of court lists they can very easily get out of hand. So, unless the Government decides to revisit this issue, the decision in principle has been made, and I would expect that an appointment would be made some time in the next financial year. In the meantime the honourable member may be pleased to know that savings are being made.

SUPERDROME

The Hon. J.F. STEFANI: I seek leave to make an explanation before asking the Minister representing the

Minister for Public Infrastructure a question about the Adelaide velodrome.

Leave granted.

The Hon. J.F. STEFANI: On 15 December 1992 the Minister provided me with answers to questions which I had raised about the cost associated with the building of the Adelaide velodrome. Now that the project has been completed I ask the Minister the following questions:

1. What is the total expenditure which has been incurred by the Government on this project?

2. Given that on two occasions the original budget had been modified to incorporate changes to the scope of works, will the Minister advise if SACON has paid any prolongation claim to any of the subcontractors listed in the answer which was given to me on 15 December 1992?

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

PUBLIC SECTOR CUTS

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Minister of Public Sector Reform a question about Public Service numbers.

Leave granted.

The Hon. R.I. LUCAS: On Tuesday of this week I asked the Minister a number of questions about public sector numbers and he indicated that I should wait for the Economic Statement and then he would be willing to engage in the debate about them. As the Economic Statement has now come down and there has been the predicted cut of 3 000 public servants, and some hundreds of teachers, obviously, I repeat my questions to the Minister and seek his response: does the Minister believe that teacher numbers in South Australia are too high and should he cut so that the teacher to student ratio is closer to the national average; and, secondly, does the Minister believe that we can deliver the same quality of public service in South Australia in the light of the fact that the Public Service numbers have been cut by 3 000 as indicated in yesterday's Economic Statement?

The Hon. C.J. SUMNER: In answer to the second question, the challenge is to reduce current expenditure and still maintain quality of service in the public sector.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: That is the challenge and I hope that it can be met, yes, by the sorts of reforms that will be set out for the public sector. I have already hinted at one approach to this matter—and that is by the amalgamation of departments. The aim is that levels of bureaucracy can be eliminated and savings made in those levels of bureaucracy where there is duplication between current departments and that service delivery to the public can be maintained. I intend to make further statements about public sector reform, including expanding on the issues of service delivery which were foreshadowed by the Premier yesterday in his statement. However, the fact is—and I am sure the honourable member is economically or financially numerate enough to work it out—that we have a State debt; we currently have a recurrent deficit. We have to get those things under control. The Economic Statement is designed to do that. However, it means that if we are going to get our recurrent spending down we have to have some reduction in the public sector work force. We are not doing this by compulsory retrenchment: it is being done by targeted separation packages. It is the Government's expectation that by 30 June next year some 3 000 will be taken off the public payroll.

The honourable member may have some other ideas as to how one reduces the current deficit, and if he does I would be happy to hear him elaborate on them during the course of any financial debate. I am sure the Hon. Mr Davis would have some ideas as well, and I would be interested in his propositions. However, the fact is that if there is a recurrent deficit we either reduce our spending or increase taxes. As I understand it, the Liberal Opposition does not want to increase taxes—that leaves them with the same proposition as the Government has come forward with (perhaps worse in their case) and that is a reduction in public sector numbers. We are doing it, we believe, as equitably as possible, with the voluntary targeted separation packages.

Having got those numbers down, we hope, from the bureaucracy and from the areas where there is duplication of service, the challenge is to not affect the delivery of services to the customer. That is the challenge of public sector reform which I acknowledge and which I am responsible for.

As to teacher numbers, the Minister of Education has a budget—the honourable member will be aware of it—and there are constraints placed on spending in the education area. All departments have to deal with salary increases, absorption of the superannuation guarantee levy, etc., whether the Education Department or otherwise, and it will be a matter for the Minister of Education, as with other Ministers, to manage those funds and to decide where the cuts will come.

It is not for me—

The Hon. R.I. Lucas: You're the Minister of Public Sector Reform.

The Hon. C.J. SUMNER: Sure. It is not for me to make the judgment about teacher numbers, or other priorities, for cutting within the Education Department. That is a matter for the appropriate Minister within the parameters laid down by the Government.

MINISTER'S STAFF

In reply to **Hon. L.H. DAVIS:** (27 October).

The Hon. C.J. SUMNER: The Premier has provided the following response:

The number of ministerial staff employed in a Ministers office is governed by the number of portfolios held by the Minister. Naturally consideration is given to the numbers employed and all are justified in this current economic climate.

STATE GOVERNMENT INSURANCE COMMISSION

The Hon. L.H. DAVIS: I understand that the Attorney-General has an answer to a question I asked on 18 February in relation to the State Government Insurance Commission.

The Hon. C.J. SUMNER: I have an answer in relation to the State Government Insurance Commission. I seek leave to have the explanation inserted in *Hansard* without my reading it. In doing so, I draw the attention of the House specifically to the last three paragraphs of the response, in which I correct some information that I gave previously in answer to the question which was not in fact correct.

Leave granted.

The Hon. C.J. SUMNER: The Treasurer has provided the following information:

1. There has not been a 'significant increase' in directors' fees at SGIC. The increase arises out of the purchase of Austrust Ltd and Executor Trustee Australia Limited by the SGIC which has consequently increased the total amount of Directors' fees to be paid. Austrust was part of SGIC for only four months in 1989-90, and Executor Trustee for 1991-92 only. The effects of this are detailed in the answer to question 3.

2. The Government's policy is that all fees paid to directors of statutory authorities including for membership of subsidiary boards or committees are assessed by the Commissioner for Public Employment who makes recommendations to the Government to ensure that fees are set equitably and consistently across the public sector. The fees are then set by the Governor on the advice of Executive Council. In any event Directors' fees will be addressed in the context of the Public Corporations Bill.

3. The relevant information is set out below –

Directors' Fees for SGIC and Controlled Entities

		1991/92 $	Total 1990/91 $	Total 1989/90 $
SGIC				
V P Kean (Chairman)		15,053		
K P Lynch (Deputy Chairman)		13,969		
A R G Prowse		10,627		
S J Chapman		8,523		
J T Hill (Paid to State Treasury)		5,576		
R W Chisholm		5,314		
	Total:	59,062	56,459	59,738
Bouvet Pty Ltd				
A R G Prowse (Chairman)		16,000		
H D Krantz (Deputy Chairman)		12,000		
K P Lynch		6,000		
R W Chisholm		6,000		
V P Kean		6,000		
	Total:	46,000	46,419	46,000
				(March to June 1990 only)
Austrust Ltd				
P B Wells (Chairman)		20,000		6,667
V P Kean		17,500		5,833
D C Gerschwitz (Paid to SGIC)		17,500		5,833
T A Sheridan		17,500		n/a
R W Kelton		17,500		"
R J Mierisch		13,125		"
B Wood		0		0
	Total	103,125	79,792	18,333

Directors' Fees for SGIC and Controlled Entities

	1991/92 $	Total 1990/91 $	Total 1989/90 $
Executor Trustee Australia Ltd	(to 25/9/91)		
R W Piper (Chairman)	5,000		
J H Heard	2,500		
R J Mierisch	2,500		
T A Sheridan	962		
P B Wells	962		
R W Kelton	962		
D Wilson	0		
V P Kean	0		
D C Gerschwitz	0		
B Wood	0		
Total	12,886	n/a	n/a
SGIC Hospitals Pty Ltd			
K P Lynch (Chairman)	18,000		
H D Krantz	12,000		
P C R Edwards	12,000		
G P West	12,000		
B M Lockwood	12,000		
G C R Keene	12,000		
Total	78,000	78,000	65,000

4. Apart from Mr Kean's fees as a Director of Bouvet Pty Ltd, (see below) the only amount paid to a superannuation fund on behalf of a director of SGIC or its subsidiaries is a payment made on behalf of the Managing Director of Austrust Ltd. This amount is referred to in note 29 to the financial statements accompanying the 1991-92 annual report.

5. Austrust Limited assumed responsibility for an obligation to its chairman (Mr P B Wells) entered into by the original owners of Elders Trustee, Elders Smith Goldsborough Mort in July 1972. This obligation was in the form of a cash payment of $60 000 (less tax) on retirement. Mr Wells retired on 26 January 1993. No other benefits have been paid to directors retiring from SGIC or related bodies in the relevant period.

In addition, I wish specifically to draw to the attention of the House that during the course of my answer to the question without notice, I said: 'As I understand it, Mr Kean did not take any Director's fees for his position with SGIC...' However, as a result of obtaining information to answer the question, it has come to my attention that my statement was not correct.

I believe I obtained my understanding from media reports on issues surrounding Mr Kean's involvement with SGIC. I apologise to the House for any misunderstanding that may have occurred.

I am now advised that fees due to Mr Kean for his membership of the SGIC Board were paid at his request to the Australian Taxation Office to help meet his taxation obligations. Fees for his membership of the Austrust Board were paid directly to Mr Kean while fees for his membership of the Board of Bouvet Pty Ltd were paid to his superannuation fund.

ONE NATION STATEMENT

In reply to **Hon. PETER DUNN** (25 March).

The Hon. BARBARA WIESE: The Prime Minister on 30 July 1992 issued a One Nation Statement on road funding. In this statement $602.5 million of extra funds were committed to road works throughout Australia. South Australia's share of the package amounted to $37.6 million. This allocation represents 6.2 per cent of road funds available under One Nation compared with 7 per cent which the State usually receives under Federal Road Funding Programs. The shortfall was offset by South Australia's increased share in the 1992-93 Federal Budget allocation which increased the overall Black Spot funding from 7 per cent to 13 per cent.

The $37.6 million is to be spent over three years as follows:— One Nation Funding for roads — South Australia

	Total $M	1991/92 $M	1992/93 $M	1993/94 $M
National Highway System				
Extensions to National Highway System Interstate Freight Routes	14.0	-	8.8	5.2
National Arterials				
Third Arterial (Sturt Triangle)	4.5	-	4.5	-
Montague Road	9.0	-	3.3	5.7
Port Wakefield Road	2.5	-	2.5	-
Black Spots	7.6	2.7	4.9	-
Total	37.6	2.7	24.0	10.9

The projects the funds are to be used on are:—

- National Highways

Upgrading of the Sturt Highway between Gawler and the Victorian border (works include widening and rehabilitation between Gawler and Daveyston and at Renmark, passing lanes at various locations and intersection improvements).

- National Arterials

  – Third Arterial Sturt Triangle (to increase capacity and thus reduce delays at South Road and Marion Road and associated intersections)

  – Montague Road (to provide a new link between Port Wakefield Road and the Main North Road)

  – Port Wakefield Road widening to reduce delays between Salisbury Highway and Cavan Road.

- Black Spots

Refer:—
List A 1991/92 Allocation of $2.7 million under One Nation"
List B 1992/93 Allocation of $7.6 million of which the first projects to be completed to the total value of $4.9 million will be earmarked under the "One Nation Statement".

LIST A

ROAD SAFETY BLACK SPOT PROGRAM — REGISTER FOR SOUTH AUSTRALIA

REF NO.		PROJECT DESCRIPTION LOCATION	TREATMENT	APPROVED COST TO PROGRAM
S0178	Happy Valley	Chandlers Hill Road Eastern Rd & Southern Cross Dr	Shoulder Sealing & Right Turns	$234,000
S0179	Munno Para	Heaslip Rd Fradd Rd	Shoulder Sealing & Right Turns	$ 50,000
S0180	Willunga	Noarlunga Victor Harbor Rd Norman Rd & Rogers Rd Oaklands Rd	Protected Right Turns	$100,000
S0181	Marion	Zante Grove to Edwards Ave	Roadside Hazard Modification	$ 20,000
S0182	Mitcham	Shepherds Hill Rd Brighton Parade/Waite Street	Provision of Medians	$ 20,000
S0183	Gumeracha	Mannum Rd Lower North East Road	Intersection Channelisation	$ 20,000
S0184	Salisbury	Waterloo Corner Rd Kensington Way	Local Area Traffic Management	$ 50,000
S0185	Campbelltown	Gorge Road Lower North East Rd to Rasheed Ave	Provision of Medians	$ 45,000
S0187	West Torrens	Marion Rd Henley Beach Rd to Burbridge Rd	Provision of Medians	$ 41,000
S0189	Woodville	South Rd Grange Rd to Adam Street	Provision of Medians	$ 20,000
S0190	Woodville	Military Rd Bower Rd to Fifth Ave	Provision for Medians	$ 45,000
S0191	Kensington	Kensington Rd Osmond Terrace	Traffic Signal Modification	$ 5,000
S0192	Unley	Unley Rd Park St/Wattle St	Traffic Signal Installations	$150,000
S0193	Kensington	Magill Rd Sydenham Rd	Traffic Signal Installations	$ 96,000
S0194	Happy Valley	Kenihans Rd Byards Rd	Traffic Signal Installations	$207,000
S0195	Enfield	Lower North East Rd Balmoral Rd	Improved Lighting — Pedestrian	$ 10,000
S0196	West Torrens	Marion Rd Burbridge Rd	Improved Lighting — Pedestrian	$ 5,000

LIST A

ROAD SAFETY BLACK SPOT PROGRAM — REGISTER FOR SOUTH AUSTRALIA

REF NO.		PROJECT DESCRIPTION LOCATION	TREATMENT	APPROVED COST TO PROGRAM
S0197	Enfield	North East Rd Tarton Rd	Improved Lighting Pedestrian	$ 15,000
S0198	Thebarton Adelaide	PortRd Park Terrace & Adam St	Traffic Signal Modification	$ 24,000
S0199	West Torrens	Tapleys Hill Rd West Beach Rd	Improved Lighting Pedestrian	$ 24,000
S0200	Willunga	Main South Rd Aldinga Rd	Improved Lighting Pedestrian	$130,000
S0201	Port Pirie	Bungama Rd Pt Pirie Rd	Roundabout Installation	$100,000
S0202	Unincorporated	Barrier Highway	Roadside Hazard Modification	$ 76,000
S0203	Kanyaka-Quorn	Hawker-Stirling North Rd	Median Barriers	$ 16,000
S0204	Whyalla	Lincoln Highway	Local Area Traffic Management	$ 30,000
S0205	East Torrens	Magill Rd/Lobethal Rd	Roadside Hazard Modification	$100,000
S0206	Unley Mitcham	Unley Rd Greenhill Rd to Blythewood Rd	Roadside Hazard Modification	$ 10,800
S0207	Unley	Fullarton Rd Magill Rd to Blythewood Rd	Roadside Hazard Modification	$ 15,700
S0208	Unley	Goodwood Rd Greenhill Rd to Grange Rd	Roadside Hazard Modification	$ 9,970
S0209	Kensington Burnside	Magill Rd Norton Summit Rd to Fullarton Rd	Roadside Hazard Modification	$ 13,700
S0210	St Peters	Payneham Rd Portrush Rd to Hackney Rd	Roadside Hazard Modification	$ 7,480
S0211	Thebarton West Torrens	Henley Beach Rd Marion Rd to Bakewell Bridge	Roadside Hazard Modification	$ 5,820
S0212	Kensington	Kensington Rd Glynburn Rd to Fullarton Rd	Roadside Hazard Modification	$ 8,720
S0213	Prospect	Prospect Rd Fitzroy Terrace to Regency Rd	Roadside Hazard Modification	$ 6,230
S0214	West Torrens	Tapleys Hill Road Burbridge Rd to Warren Ave	Roadside Hazard Modification	$ 17,440

LIST A

ROAD SAFETY BLACK SPOT PROGRAM — REGISTER FOR SOUTH AUSTRALIA

REF NO.		PROJECT DESCRIPTION LOCATION	TREATMENT	APPROVED COST TO PROGRAM
S0215	Unley Kensington	Glen Osmond Rd & Fullarton Road Portrush Rd to Greenhill Rd	Roadside Hazard Modification	$ 9,220
S0216	Adelaide	Flinders St	Roadside Hazard Modification	$ 1,250
S0217	Salisbury	Smith Rd	Roadside Hazard Modification	$ 910
S0218	Salisbury	Bridge Rd & Briens Rd Smith Rd to Grand Junction Rd	Roadside Hazard Modification	$ 19,940
S0219	Hindmarsh	South Rd Torrens Rd to Port Rd	Roadside Hazard Modification	$ 3,740
S0220	Port Adelaide	Grand Junction Rd Port Rd	Traffic Signal Modification	$ 70,000
S0221	Enfield	Main North Rd Grand Junction Rd	Traffic Signal Modification	$ 50,000
S0222	Prospect	Main North Rd Nottage Terrace	Traffic Signal Modification	$ 50,000
S0223	Hindmarsh	Torrens Rd Churchill Rd	Traffic Signal Modification	$ 50,000
S0224	Mitcham	Torrens Rd Churchill Rd	Traffic Signal Modification	$ 50,000
S0225	Mitcham	Belair Rd Springbank Rd	Traffic Signal Modification	$ 20,000
S0226	Marion	Diagonal Rd Oaklands Rd	Traffic Signal Modification	$ 30,000
S0227	Happy Valley	Flagstaff Rd Black Rd to Main South Rd	Traffic Signal Modification	$ 70,000
S0228	Marion	Marion Rd Raglan Ave	Traffic Signal Modification	$ 10,000
S0229	Clare	Main North Rd	Staggering of Cross Intersections	$280,000
S0230	Unley	Fullarton Rd Wattle St to Raldon Gr	Improved Lighting Pedestrian	$ 45,000
S0231	Walkerville Enfield	North East Rd Taunton Rd & Ascot Ave	Intersection Channelisation	$ 15,000
S0232	Gumeracha	Mannum - Tea Tree Gully Rd	Roadside Hazard Modification	$ 56,000
S0233	Mount Barker	Brookman Rd	Roadside Hazard Modification	$160,000

LIST B

ROAD SAFETY BLACK SPOT PROGRAM — REGISTER FOR SOUTH AUSTRALIA

REF NO.		PROJECT DESCRIPTION LOCATION	TREATMENT	APPROVED COST TO PROGRAM
S0234	Brighton	Jetty Rd & Cedar Ave The Crescent	Intrsctn Channeliztn& Medians	$ 7,000
S0235	Enfield Woodville	First Ave & Gray St Hookings Ave	Roundabout Installation	$ 35,000
S0236	Gleneig	Augusta St Gordon St	Roundabout Installation	$ 60,000
S0237	Tea Tree Gully	Milne Rd Ladywood Rd	Rdabout/Intsctn Channelization	$ 26,000
S0238	Hindmarsh	Second St West St	Roundabout Installation	$ 45,000
S0239	Hindmarsh	Second St Chief St	Intersection Channelization	$ 15,000
S0240	Munno Para	Coventry Rd Anderson Walk	Provision of Medians	$ 23,000
S0241	Kensington — Norwood	College Rd King William St	Roundabout Installation	$ 40,000
S0242	Port Lincoln	Verran Tce/St Andrews Tce Lebrun St	Intersection Channelization	$ 28,000
S0243	Munno Para	Peachey Rd Petherton Rd	Roundabout Installation	$ 85,000
S0244	Thebarton	George St Dew St	Improved Skid Resistance	$ 12,000
S0245	Tea Tree Gully	Milne Rd Kingsford Smith St	Intrsctn Channelzatn & Medians	$ 12,000
S0246	Salisbury	John St Ann St	Roundabout Installation	$ 68,000
S0247	Port Pirie	Senate Rd Balmoral Rd	Intersctn Channelztn & Medians	$ 30,000
S0248	Port Augusta	Stirling Rd Carlton Rd	Provision of Medians	$ 20,000
S0249	Adelaide	Montefiore Rd War Memorial Drive	Intrsctn Channelztn & Medians	$ 60,000
S0250	Adelaide	West Tce Burbridge Rd	Intrsctn Channelztn & Medians	$ 20,000

LIST B

ROAD SAFETY BLACK SPOT PROGRAM — REGISTER FOR SOUTH AUSTRALIA

REF NO.		PROJECT DESCRIPTION LOCATION	TREATMENT	APPROVED COST TO PROGRAM
S0251	Adelaide	West Tce Hindley to Sturt Sts	Provide 2 R/turn lanes at Itsn	$ 64,000
S0252	Salisbury	Main North Rd South Tce	Traffic Signal Installation	$ 90,000
S0253	Onkaparinga	Birdwood - Verdun Rd through Balhannah & Oakbank Towns	Improve Lighting	$ 90,000
S0254	Noarlunga	Panalatinga Road Reynell Rd	Traffic Signal Installation	$130,000
S0255	Noarlunga	Panalatinga Rd Pimpala Rd	Traffic Signal Installation	$210,000
S0256	Onkaparinga	Onkaparinga Valley Rd Mappinga Rd Junction	Roadside Hazd Mod'n & RT turns	$220,000
S0257	Marion	Morphett Rd Oaklands Rd	Traffic Signal Modification	$ 20,000
S0258	Unley West Torrens	Anzac Highway Leader St	Traffic Signal Mod'n & Intro chzn	$ 40,000
S0259	Campbelltown	Lower North East Rd Darley Rd	Traffic Signal Mod'n & Intrn chzn	$ 23,000
S0260	Salisbury	Bridge Rd Kesters Rd	Traffic Signal Mod'n & Intrn	$ 40,000
S0261	Henley & Grange	Grange Rd East Tce	Provision of Medians	$ 76,000
S0262	Marion Brighton	Oaklands Rd Brighton Rd to Morphett Rd	Provision of Medians	$ 85,000
S0263	West Torrens Marion	Cross Rd Anzac Highway to South Rd	Provision of Medians	$123,000
S0264	Marion Brighton	Sturt Rd Brighton Rd to Morphett Rd	Provision of Medians	$ 72,000
S0265	Enfield	Grand Junction Rd Hampstead Rd to Walkleys Rd	Provision of Medians	$126,000
S0266	West Torrens	Burbridge Rd Marion Rd to Bagot Ave/Brooker Tce	Provision of Medians	$ 38,000
S0267	Port Adelaide	St Vincent St Jervois Bridge to Nelson st	Provision of Medians	$ 18,000

LIST B

ROAD SAFETY BLACK SPOT PROGRAM REGISTER FOR SOUTH AUSTRALIA

REF NO.		PROJECT DESCRIPTION LOCATION	TREATMENT	APPROVED COST TO PROGRAM
S0268	Mitcham	Shepherds Hill Rd Donnybrook Rd to Northcote Rd	Provision of Medians	$113,000
S0269	Meningie Peake	Tailem Bend to Pinnaroo Rd	Shoulder Sealing & Curve Delintn	$ 30,000
S0270	East Torrens	Magill-Lobethal Rd from Norton Summit to Ashton	Roadside Hazard Modification	$ 47,000
S0272	Marion	Diagonal Rd Miller St Junction	Improved Lighting	$ 55,000
S0273	Unincorporated	Barrier Highway from Winnininnie to Yunta	Shoulder Sealing	$150,000
S0274	Unincorporated	Barrier Highway at Cutana Rail Crossing	Shoulder Sealing & curve Delintn	$ 60,000
S0275	Onkaparinga	Onkaparinga Valley Rd Spaehr Rd Junction	Shoulder Sealing	$ 17,000
S0276	Tanunda	Barossa Valley Way Siegersdorf Rd	Protected Right Turns	$ 50,000
S0277	Barossa	Barossa Valley Way West of Rowland Flat	Curve Delinetn & Warning Signs	$ 5,000
50278	Barossa	Barossa Valley Way East of Rosedale Junction	Improved Sight Distance	$ 75,000
S0279	Barossa	Barossa Valley Way East of Mugge Rd	Superelevation on Curves	$150,000
S0280	Tea Tree Gully	Golden Grove Rd Grenfell Rd	Traffic Signal Installation	$120,000
S0281	Salisbury	Montague Rd Fairfax Rd	Traffic Signal Installation	$100,000
S0282	Port Adelaide Enfield	Grand Junction Rd Hanson Rd	Traffic Signal Mod'n & Intsn Chzn	$ 92,000
S0284	Enfield Prospect	Main North Rd Regency Rd	Intersection Channelization	$ 20,000
S0285	Enfield	North East Rd Muller Rd	Intersection Channelization	$ 30,000
S0286	Adelaide Unley	Greenhill Rd Glen Osmond Rd	Traffic Signal Mod'n & Intsn	$160,000

LIST B

ROAD SAFETY BLACK SPOT PROGRAM — REGISTER FOR SOUTH AUSTRALIA

REF NO.		PROJECT DESCRIPTION LOCATION	TREATMENT	APPROVED COST TO PROGRAM
S0287	Campbelltown Burnside	Magill Rd St Bernards Rd/Penfold Rd	Intersection Channelization	$ 5,000
S0288	Burnside	Portrush Rd Greenhill Rd	Traffic Signal Mod'n & Intsn	$ 90,000
S0289	Mitcham	Fullarton Rd Cross Rd	Traffic Signal Modification	$ 5,000
S0290	Marion	Marion Rd Cross Rd	Traffic Signal Modification	$ 6,000
S0291	West Torrens	Tapleys Hill Rd Burbridge Rd	Traffic Signal Mod'n Intsn Chzn	$240,000
S0292	Walkerville	North East Rd Smith St	Intersection Channelization	$ 10,000
S0293	Noarlunga	Main South Rd O'Sullivans Beach Rd	Intersection Channelization	$ 20,000
S0294	Adelaide Unley	Greenhill Rd Hutt St/George St	Traffic Signal Mod'n & Intsn	$180,000
S0295	Elizabeth	Main North Rd Woodford Rd and Midway Rd	Traffic Signal Mod'n & Intsn	$ 15,000
S0296	Enfield	North East Rd Sudholz Rd	Intersection Channelization	$ 25,000
S0297	Kensington - Norwood	The Parade Osmond Tce	Traffic Signal Modification	$ 20,000
S0298	Salisbury	Salisbury Highway Kings Rd	Traffic Signal Modification	$110,000
S0299	Salisbury	Main North Rd Kings Rd	Traffic Signal Modification	$110,000
S0300	Tea Tree Gully	Montague Rd Reservoir Rd	Traffic Signal Signal Mod'n	$ 20,000
S0301	Mitcham	Fullarton Rd Kitchener St/Claremont Ave	Traffic Signal Modification	$ 30,000
S0302	Mitcham	Main Rd North of Ackland Hill Rd	Shoulder Sealing & Lighting	$ 35,000
S0303	Happy Valley	Main Rd South of Crane Ave	Superelevation on Curves	$ 30,000
S0304	Mitcham	Main Rd South of Turners Ave	Improved Sight Distance	$ 8,000

LIST B

ROAD SAFETY BLACK SPOT PROGRAM — REGISTER FOR SOUTH AUSTRALIA

REF NO.		PROJECT DESCRIPTION LOCATION	TREATMENT	APPROVED COST TO PROGRAM
S0305	Mitcham	Main Rd East Tce Junction	Lighting & Protected Right Turn	$ 45,000
S0306	Mitcham	Main Rd Turners Ave Junction	Lighting & Site Edgelining	$ 12,000
S0307	Port Elliot Goolwa Victor Harbor	Noarlunga Victor Harbor Rd	Shoulder Sealing	$300,000
S0308	Mitcham	Upper Sturt Rd near Footts Hill Rd	Overtaking Lanes	$120,000
S0309	Munno Para	Main North Rd from Anderson Walk to Gardiner Tce	Improve Lighting	$125,000
50310	Onkaparinga	Onkaparinga Valley Rd Lobethal - Woodside Rd Junction	Improved Sight Distance	$ 30,000
S0311	Thebarton Adelaide	East Tce/Railway Tce Henley Beach Rd & Deviation Rd	Intersctn Chnnzin & Medians	$ 60,000
S0312	Noarlunga Willunga	Main South Road Seaford Rd to Cape Jervis	Pavement Markers	$ 90,000
S0313	Mount Remarkable	Main North Rd 3 Bridges-Wilmington Melrose Sctn	Roadside Hazard Modification	$ 30,000
S0314	St Peters Walkerville	Stephen Tce Payneham Rd to North East Rd	Provision of Medians	$ 53,000
S0315	Gumeracha	Tea Tree Gully Mannum Rd Inglewood to Chain of Ponds	Roadside Hazard Modification	$ 50,000
S0316	Elizabeth	Philip Highway Hogarth Rd	Roundabout Installation	$150,000
S0317	Campbelltown	Newton Rd Albion Tce/Graves St	Local Area Traffic Management	$ 5,000
S0318	Happy Valley	Black Rd Oakridge Rd	Shlder Sealing & Curve Delintn	$ 67,000
S0319	Campbelltown	Gorge Rd Hockley Tce Junction	Improved Sight Distance	$220,000
S0320	Strathalbyn	Mt Barker/Strathalbyn Rd	Roadside Hazard Modification	$120,000
S0322	Salisbury	Kings Rd Salisbury Highway to Main North Rd	Improve Lighting	$ 50,000

LIST B

ROAD SAFETY BLACK SPOT PROGRAM — REGISTER FOR SOUTH AUSTRALIA

REF NO.		PROJECT DESCRIPTION LOCATION	TREATMENT	APPROVED COST TO PROGRAM
S0323	Happy Valley	Flagstaff Rd Black Rd to Bonnyview Rd	Improve Lighting	$160,000
S0324	Marion	Marion Rd Raglan Ave	Traffic Signal Modification	$ 3,000
S0325	Salisbury	Kings Rd Cross Keys Rd	Traffic Signals & Channeliztn	$100,000
S0326	Tanunda	Barossa Valley Way Krondorf Rd/Halletts Rd	Protected Right Turns	$270,000
S0327	Salisbury	Waterloo Corner Bolivar Rd	Roundabout Installation	$ 60,000
S0328	Mount Gambier	Keith - Mt Gambier Rd Pinehall Ave Intsctn with Bishop Rd	Lighting at Isolated Intrsctns	$170,000
S0329	Onkaparinga	Onkaparinga Valley Rd Curve South of Balhannah	Shoulder Sealing	$ 3,000
S0330	Roxby Downs	Olympic Dam - Pimba Railway Crossing at Pimba	Install Flashing Lights	$ 80,000
S0331	Port Adelaide	Old Port Rd Grand Junction Rd & Webb St	Improve Lighting	$ 90,000
S0332	Salisbury	Martins Road	Improve lighting	$ 14,000
S0333	Prospect	North East Rd Edwin Ave	Improve Lighting	$ 10,000
S0334	Salisbury	Waterloo Corner Bagster Rd	Improve Lighting	$ 13,000
S0335	Port Adelaide	Commercial Rd St Vincent St	Improve Lighting	$ 10,000
S0336	Woodville	Trimmer Parade Frederick Rd	Improve Lighting	$ 16,000
S0337	Munno Para	Old Port Wakefield Rd Angle Vale Rd	Improve Lighting	$ 20,000
S0338	Mount Gambier	Mt Gambier - Port Macdonnell Rd	Shoulder Sealing	$ 50,000
S0339	Noarlunga	Main South Rd Randell Rd	Improve Lighting	$ 20,000

LIST B

ROAD SAFETY BLACK SPOT PROGRAM — REGISTER FOR SOUTH AUSTRALIA

REF NO.		PROJECT DESCRIPTION LOCATION	TREATMENT	APPROVED COST TO PROGRAM
S0340	Munno Para	Main North Rd Uley Rd	Traffic Signals & Channeliztn	$150,000
S0341	Mount Gambier	Mt Gambier - Port Macdonnell Rd Princes Highway	Improve Lighting	$ 20,000
S0342	Barossa	Barossa Valley Way Trial Hill Rd	Shoulder Sealing & Liarning Signs	$ 10,000
S0343	Gawler	Calton Cheek Avenue	Channelisation	$ 4,000
S0344	Tea Tree Gully	Ladywood Road Brunel Drive	I/S Channelisation	$ 3,000
S0345	Enfield	Hanson Road Cormack Road	Traffic Signal instal	$150,000
S0346	Noarlunga	Witton Road Dale Avenue	Install Roundabout	$100,000
S0347	Port Adelaide	Eastern Parade Bedford Street	Channelisation	$ 5,000
S0348	Woodville	Hartley Road Greville Avenue	I/S Channelisation	$ 2,000
S0349	Woodville	Ninth Avenue Owen Street	Roundabout	$ 15,000
S0350	Port Adelaide Woodville	Tapleys Hill Road Old Port Road	Traffic Signal Modification	$ 4,000
S0351	Woodville Port Adelaide	Old Port Road Frederick Road	Traffic Signal Modification	$ 3,000
S0352	Woodville	Crittenden Road	Improved Lighting Ped Cross	$ 4,000
S0353	Woodville	Crittenden Road Findon Road to Grange Road	Improve Lighting	$ 54,000
S0354	Port Adelaide	Torrens Road Fussell Place	Intersection Channelisation	$ 3,000
S0355	Port Adelaide	Semaphore Road Victoria Road	Traffic Signal Modification	$ 4,000

LIST B

ROAD SAFETY BLACK SPOT PROGRAM — REGISTER FOR SOUTH AUSTRALIA

REF NO.		PROJECT DESCRIPTION LOCATION	TREATMENT	APPROVED COST TO PROGRAM
S0356	Noarlunga	Gulfview Road Galloway Road	Roundabout Installation	$ 49,000
S0357	Noarlunga	Goldsmith Drive New Honeypot Road	New Traffic Signal Install	$120,000
		approved limit of program funding:		$7,600,000

GENTING GROUP

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

The Hon. ANNE LEVY: The Liquor Licensing Commissioner advised Mr D Baker, MP by letter dated 26 January 1993 that he had written to the Lotteries Commission and the Chair of the ASER Group of Companies seeking approval to release certain documents sought by the Honourable Member.

The Commissioner failed to advise Mr Baker in writing within the specified time whether access to the documents would be granted. However, the Commissioner did verbally advise Mr Baker's nominated officer that he was still awaiting replies from the Lotteries Commission and ASER.

It is clear that the Commissioner has co-operated with Mr Baker at all times and he has been made aware of the requirements of the Freedom of Information Act to advise of a decision within 45 days of an application for access to a document being received. Subsequently, on 29 March 1993 the Commissioner wrote to Mr Baker advising as follows:

I refer to your request of 11 January 1993 for access to certain documents held in this Office and to my initial reply on 26 January 1993.

The Lotteries Commission of South Australia has advised that it will not grant its approval for the release of the report dated 29 November 1984 from the Acting Superintendent of Licensed Premises to the Lotteries Commission, on the corporate structure of the ASER Group of the supplementary report dated 8 January 1985.

In respect of other documents held in this Office, I have no objection to your nominated officer, Mr Richard Yeeles, examining the documents in this Office and identifying those to which he seeks access. I suggest this course because of the substantial amount of correspondence held.

I apologise for the delay but hope my agreement to provide this Office's documents for examination in part meets your requirements.

As I said in my initial response to the honourable member's question, I had no knowledge of the request and was not responsible for the delay.

SCHOOL APPOINTMENT

In reply to **Hon. R.I. LUCAS** (4 March).

The Hon. C.J. SUMNER: The Minister of Education, Employment and Training has provided the following response:

Ms. Kathleen Cotter was temporarily reassigned to the Minister of Education's Office for the period 18.2.88 to 24.1.0. Ms. Cotter was, prior to this appointment, Senior Early Childhood Education Consultant with 14 years teaching experience in South Australia.

Upon completion of this reassignment and as a Training and Development exercise the Director-General appointed her as Acting Principal of Nairne Primary School for 1991. This temporary reassignment resolved the need to place Ms. Cotter and assisted the school as there was no suitable applicant for the temporary vacancy.

A temporary placement of this nature, while not a common practice, is in line with the Education Department placement policy. Indeed, three such appointments were made in 1992 for training and development purposes.

In 1992 Ms. Cotter applied for, and was subsequently appointed to, the position of Principal of Elizabeth West Junior Primary School through the Open Merit Selection process.

STATUTES AMENDMENT (ATTORNEY-GENERAL'S PORTFOLIO) BILL

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. K.T. GRIFFIN: My question on clause 2 is one that I seem to be raising on many occasions on similar clauses. Can the Attorney-General give any indication as to when it is proposed to bring the Bill into operation when it is passed, and can he also say whether or not it is intended to suspend the operation of any part of the Bill?

The Hon. C.J. SUMNER: As soon as possible, in general, although for the cross-vesting we have to wait to get a date which is uniform around Australia. So, it is possible that there will be a situation where there is a different proclamation date for different sections.

Clause passed.

Clauses 3 to 5 passed.

Clause 6—'Substitution of section 6.'

The Hon. C.J. SUMNER: The Hon. Mr Griffin has raised a couple of points regarding the Jurisdiction of Courts (Cross-Vesting) Bill. The amendment is consistent with the uniform draft provision agreed to by the standing committee. As previously advised the Commonwealth has already passed similar amendments. New South Wales, Tasmania and the Northern Territory have enacted legislation also. Section 60AA provides that the Family Court may grant leave for proceedings to be commenced for the adoption of a child by the prescribed adopting parent. Section 60AA allows the Family Court to consider whether a custody or guardianship order made under the Family Law Act should cease to have effect by operation of an order for adoption under State or territory law. This participation by the Family Law Court will enable particular consideration of the position of the parent whose rights in respect to the child otherwise would be terminated by the making of an order for adoption by the other parent and step parent. Matters arising under section 60AA of the Family Law Act have been defined as special Federal matters under the Commonwealth cross-vesting legislation. The Commonwealth amendment will not be proclaimed until the States have passed corresponding legislation. The State amendment is necessary to make it clear that the cases are to be transferred to the Family Court and not the Federal Court.

The Hon. K.T. GRIFFIN: The Attorney-General has made a reference to the legislation already having been enacted in several jurisdictions but not others. Can he give an indication as to what the situation is in the other jurisdictions? I think one of those was Victoria, and I would be interested to know what was happening in respect of that State and also in the other jurisdictions.

The Hon. C.J. SUMNER: I do not know.

The Hon. K.T. GRIFFIN: I have some difficulty in assimilating the answer of the Attorney-General because it is a complex issue. So, I ask that he bear with me as I work through aspects of it. Is the proposition that any issue relating to the adoption of a child who is the subject of a custody order would become a special federal matter, about which notice must be given to State and Federal Attorneys-General with a view to an application to have that transferred into the Family Court, or is that a misunderstanding of the situation?

The Hon. C.J. Sumner: Where it is an adoption by a step parent.

The Hon. K.T. GRIFFIN: Not an adoption made by anyone else?

The Hon. C.J. Sumner: No that is right.

The Hon. K.T. GRIFFIN: So, just an adoption by a step parent. Is it only in those cases where there has been a custody order made by the Family Court or is it in all cases where there is proposed to be an adoption by a step parent?

The Hon. C.J. SUMNER: The section is fairly simple, or at least it is short. Section 60A(a) provides that the Family Court, the Supreme Court of the Northern Territory or the Family Court of a State may grant leave for proceedings to be commenced for the adoption of a child by a prescribed adopting parent. A prescribed adopting parent means a parent of the child, spouse of or a person in *a de facto* relationship with the parent of the child, or a parent of the child and either his or her spouse or a person in a *de facto* relationship with the parent. That is in general terms a parent or step-parent.

The Hon. K.T. GRIFFIN: That means that in relation to South Australia this provision overrides the State Adoption Act in so far as a parent or a step-parent is proposing to adopt the child, and in those circumstances it may be that the matter is referred to the Family Court.

The Hon. C.J. SUMNER: In the report from the Special Committee of Solicitors-General to the Standing Committee of Attorneys-General the further explanation on this topic is as follows:

> This amendment does not in any way trespass upon the jurisdiction of State courts under the States' respective adoption laws. It is merely an amendment to secure that the Family Court will determine whether a custody or guardianship order made under the Family Law Act should cease to have effect by operation of an order for adoption under State or Territory law. This participation by the Family Court will enable particular consideration of the position of the parent whose rights in respect of the child otherwise would be terminated by the making of an order for adoption by the other parent and the step-parent. The amendment is precipitated by the issue thrown up by the decision of the High Court in *re LSH ex parte RTF (1987) 164CLR 91.*

The Hon. K.T. Griffin: So it applies in all cases, not only those where there is a custody order.

The Hon. C.J. SUMNER: Yes.

The Hon. K.T. Griffin: But it may not necessarily be taken up in every case.

The Hon. C.J. SUMNER: That is right. But it is facilitating the resolving of dispute but with the Family Court being cognisant of what is going on so that it can make adjustments to orders that it may be concerned with.

The Hon. K.T. Griffin: So, the State court can make an adoption order, but it is not finally resolved until it has also been resolved in the Family Court, if the matter is referred to the Family Court?

The Hon. C.J. SUMNER: As I understand, it is more a matter of giving notice than anything else. The Family Court has to deal with matters of custody and the like. It may be that an issue of an adoption will come up, the Family Court can look at it and say 'Adoption is a matter for State law: we will grant leave for the State court to deal with this question of adoption. However, it will then be seized of the matter and may have to make consequential orders relating to custody, etc., once the adoption matter has been dealt with.' Also, the point being made is that if leave is not sought or is not granted by the Family Court, then existing rights of custody, guardianship or access continue.

The Hon. K.T. Griffin: The adoption does not proceed under South Australian law.

The Hon. C.J. SUMNER: It could still proceed in the State court, but you then have the problem of possible conflict between Federal Court orders of custody which could be in conflict with adoption orders that are made. Probably, once an adoption order is made the issue would need to go back to the Federal Court for determination of custody issues. But at least the two courts know what they are doing and there is a mechanism to ensure a harmonisation, as I understand it, of the orders that are being made, and that the courts are

on notice that proceedings that may affect other court orders, that is, proceedings in the State court that may affect Federal Court orders, are on foot.

The Hon. K.T. GRIFFIN: I appreciate the information that the Attorney-General has given. It must be acknowledged that it is not an easy matter to resolve, and I can understand that there are potential issues of conflict between the Family Court and a State court, where adoption issues are being dealt with, on the basis that this is largely a matter for giving notice, so that each court knows what the other is doing, and on the basis that the cross-vesting provisions are designed to try to resolve the conflict, I think, and on the basis that this is agreed legislation across Australia, I do not propose to take that issue any further. The only other question I ask the Attorney-General is whether between now and when this matter is dealt with in the House of Assembly he could ascertain what the position is in the other jurisdictions where the legislation has not been yet addressed. I would appreciate having that information.

The Hon. C.J. SUMNER: I will try to obtain that.

Clause passed.

Clauses 7 and 8 passed.

Clause 9—'Discharge of mortgages and encumbrances.'

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

Page 4, lines 24 to 31—Leave out Part 5.

This matter was dealt with when we were previously debating this Bill. The Government is now moving to delete part 5 relating to an amendment to section 143 of the Real Property Act. The decision has been taken following discussions with the Law Society, Land Brokers Society, Standing Committee of Conveyancers, Association of Permanent Building Societies, Australian Bankers Association and the conveyancing division of the Real Estate Institute. While some of the groups were happy with the Bill as drafted, some concern was expressed at the duplicate mortgage or encumbrance not being required in the case of registration or partial discharge of a second or subsequent mortgage or encumbrance, where the duplicate certificate of title is not produced.

The Registrar-General had proposed to deal with this by way of a notice of lodging parties. This was considered sufficient by some representatives. However, others were concerned that such a practice could be changed by a subsequent Registrar General. Accordingly, it was agreed at the meeting that the legislation should make it clear that a duplicate mortgage or encumbrance should continue to be required in those circumstances. However, providing for the suggested amendment in the Bill is not as straightforward as first thought. The proposed amendment is likely to be drawn in different terms from those agreed to, and would need to be the subject of further discussion. Given this, it has been decided to withdraw the amendment at this stage. It will be dealt with in the next session of Parliament.

The Hon. K.T. GRIFFIN: I am pleased that that will occur. It is an important issue that does need to be resolved first, amicably, if at all possible, with those professionals and businesses who have the most dealing with the Real Property Act. I support the amendment.

Amendment carried; clause as amended passed.

Long title.

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

Page 1, line 7—Insert 'and' before 'the Motor Vehicles Act 1959' and leave out all words after 'the Motor Vehicles Act 1959'.

Amendment carried; long title as amended passed.

Bill read a third time and passed.

CONSENT TO MEDICAL TREATMENT AND PALLIATIVE CARE BILL

Adjourned debate on second reading.

(Continued from 24 March. Page 1669.)

The Hon. K.T. GRIFFIN: This is an important piece of legislation. I realise it has been the subject of consideration by a select committee in the House of Assembly but, notwithstanding that, there are still a number of issues which need to be addressed and which obviously will be the subject of amendments by various members, and I may well have some of my own once I have had an opportunity to work through the amendments of other members.

It is an important piece of legislation because it seeks to put into writing those procedures which must be followed in relation to the medical treatment of persons where consent is required and also to tread that thin line between consent to treatment and initiatives to assist a person to die. Once we get to the point of putting into writing some of the obligations of medical practitioners and the rights of a patient and the rights of a person appointed as an attorney, we get into the very difficult area of having to define terms. Those terms are not easy to define either after careful consideration or, more particularly, in emergency situations on the run.

Medical practitioners, including dentists, frequently do not have the time to make the decision. The decision has to be made immediately and what may appear to be within the terms of the law as understood by the medical practitioner in an emergency situation and what might ultimately turn out to be the law as determined by objective standards after rational consideration away from the pressure of the moment frequently may be two different things.

In trying to translate into the written word obligations, responsibilities and rights we also have the difficulty in our system of probably limiting rather than enhancing rights. We also have the difficulty of interpreting because the English language is certainly not clear on what to a medical practitioner or some other person might be the meaning of a series of words in a particular context; they may mean something quite different in the same context to other people from other backgrounds.

This Bill needs much care and careful consideration in the Committee stage. I have followed with interest the debate in both Houses of Parliament. I must confess that at this stage, whilst following the debate, I have not reached a final conclusion about some of the difficulties, nor do I believe that I have identified all of the difficulties. But I can assure the Council and those who read *Hansard* that by the time this matter is dealt with in Committee I will be on top of it.

I come from a position basically of not supporting in any way any authority for medical practitioners or others

to assist others to die. I am supportive of those provisions which will enable medical practitioners to deal with emergencies and to endeavour to establish what is or is not consent. I have misgivings about the powers and responsibilities of a medical agent, as I have concerns about the issue of the age at which persons may make decisions and I have other concerns about the Bill which I would hope to explore in this contribution.

So, what I am saying, in effect, is that because of the pressures of the past few weeks in the legislative area the contribution I make now will not necessarily be as coherent as it should be, nor will I have addressed all of the issues which must be addressed in looking at this legislation.

There are members in the Parliament in both Houses who hold a passionate view about one or other of the positions required to be considered in respect of this Bill. However, whilst they may hold those views passionately, we do have to recognise that we are making a law for the community at large; we are not making a law only for medical practitioners. We are not making a law only for legal practitioners or for the courts; we are making a law which has general application to ordinary people within the community, where the issues and the solutions must be clear.

I first make the observation that the Medico-legal Association, which involves medical practitioners and lawyers, had a conference recently and, although lawyers have the pressure of their practices and are notoriously slow in responding on some Bills, finally, when their attention is drawn to an issue of particular concern, they work at it like terriers and they endeavour to look at the legislation or the proposals in ways which are, I think, of benefit to the community, even though some may regard their examination as pedantic.

However, the medico-legal group did consider the legislation recently. It made some observations, which I think ought to be on the record. A very brief memorandum from that association states in part:

> It confuses [that is, the Bill] proper standards with professional standards, overlooking the fact those standards are not determinative of the legal standards. These will be determined by the court. It lacks clarity. Many of the definitions are obscure, for example, 'terminal illness', 'extraordinary measures', 'medical procedures', 'practice', 'treatment', 'distress', 'unable'. It has important inconsistencies. For example, under section 6, an agent has the power to consent or to refuse to consent to a medical procedure, and the power of attorney must be in the form prescribed by schedule 1. The power of attorney authorises the agent to make decisions as to my medical treatment.

That is taken from the schedule. Section 6, to which the reference is made, is now clause 7 of the Bill in this place. The association goes on to say:

> It is inconsistent with general law of this State as to the definition of a child. It will present great difficulty for parents. For example, what happens if the parents disagree with each other and/or with the child?... What happens if the High Court eventually decided a parent has no right to consent or refuse? It is dangerous. There is no mechanism to review or challenge a decision made by an agent if the agent is motivated by malice, is not capable of giving informal consent or otherwise incompetent or acting recklessly or unreasonably. There is also potential for abuse in long-term care and nursing home facilities if truly independent persons are not appointed. It is badly drafted. For example, it purports to relieve medical practitioners from civil or criminal liability, but says nothing about onus or standard of proof. It is contrary to the criminal law of this State. Sections 11 and 12, particularly by the reference to act or omission in section 11, can be construed as permitting the giving of a lethal injection.

A quick comparison suggests that those sections 11 and 12 are the same as clauses 11 and 12 in our Bill, but I may be corrected on that. That is a view from the Medico-legal Association as a result of the conference at which it gave consideration to that matter.

I have been informed that since then the Law Society Council has passed a motion, and it is important again to read that into *Hansard.* The motion on the Bill states:

> That the President of the Law Society write to the Minister of Health requesting the further parliamentary consideration of the Consent to Medical Treatment and Palliative Care Bill 1992 be stayed on the following grounds:
>
> (a) that there is considerable concern among legal practitioners, and to our knowledge medical practitioners, over the implications of and the practical implementation of the Bill.
>
> (b) that there has not been an adequate response to the written criticisms of the Bill presented by Jonathon Wells QC and Margaret Sommerville, Professor of Law, Magill University, Canada, a recognised authority on this area of the law.
>
> (c) that there are legislative difficulties in the Bill.
>
> Paragraph 1. An agent may consent to medical treatment in one part (section 6) and, in another part, the agent can make a decision in relation to medical treatment—The schedule.

That section is now clause 7. The motion continues:

> Paragraph 2. A child is defined as under 16 years of age, whereas in other Acts a child is defined as under the age of 18 years.
>
> The Act permits a parent to make a decision with respect to a child but is silent on what should occur where two parents disagree on the decision. There is doubt as to the extent a parent can give consent to treatment of a person under 18 years of age in any event. Re: *Marion* 1992 FLC 92-293.
>
> (d) there are no provisions for review set out in the Bill. It further requests that the President seek from the Minister formal consultations with the legal, medical and nursing professions, being professions directly involved in the implementation of the Bill before further parliamentary consideration occurs.

I think the issue in relation to who can grant a medical power of attorney is important. As the Law Society says, a child is defined as under 16 years of age, whereas in other Acts a child is defined as under the age of 18 years. I know my colleague the Hon. Dr Ritson has an amendment on file which deals with that age and seeks to use 18 as the basis of the age after which a medical power of attorney may be made. I tend to support that.

Of course, 18 is the age at which persons may become eligible to vote, not before that, even though we say that frequently many younger people know more about what is happening in the real world—and not only the world of politics—than their parents.

We have legislation which has just passed the House of Assembly dealing with young offenders, where a person is a young offender, or within the category of a young offender, up to the age of 18. So, although there is a view that in some respects offenders of 16 or 17 ought to be treated as adults, the Bill, as I understand it, presently

deals with offenders on the basis of 18 being the age level at which the division occurs between adult and young offenders.

There are many other examples. In the criminal law, however, the age in relation to consent varies from the age of majority. The age of majority is 18 for contractual purposes. There are limited circumstances in which persons under the age of 18 years, as minors, are able to contract. They can contract for necessaries; there is very little else that they can contract for. So, 18 is the age.

What makes medical treatment any different from those other significant areas of human activity and responsibility which fixes 18 as the age? I suggest that there is very little, if anything, which distinguishes the two. So, I tend to the view that not only for the sake of consistency but also because of the question of legal responsibility and capacity 18 should be the age.

The Law Society also makes the point that a parent may make a decision with respect to a child but is silent on what should occur where the two parents disagree on the decision. That is an important issue that has to be addressed. What happens if the parents are separated? Neither parent may have applied to the Family Court for custody, so they are both joint guardians of the child. The child is seriously injured and ends up in hospital; one parent goes with the child; the other parent is notified; so they both end up at the hospital. If they both disagree, what does the poor medical practitioner do in the circumstances of parents disagreeing as to what should or should not be done? That is a traumatic situation for the parents; it would be equally traumatic for the medical practitioners and for the paramedics and others who may be involved in the provision of treatment. So, that issue has to be addressed.

There is also the general issue of powers of attorney. There is a form of power of attorney in the schedule—a medical power of attorney—and there is a provision for an acceptance. I suggest that, although some regard that as an enduring power of attorney, there are important differences, because with an ordinary power of attorney two attorneys can be appointed. If I go overseas or interstate, or if I just want to have a power of attorney for the purpose of providing some protection if something should happen to me or I should be away suddenly, I can appoint two, three, four or more attorneys, and I can appoint them to act jointly, together, in which case they will all have to make the decision and sign the documents.

The Hon. M. S. Feleppa interjecting:

The Hon. K.T. GRIFFIN: Or in order of priority; or I can appoint them severally; so any one can exercise the power. This Bill, in clause 7 (5), says that a 'medical power of attorney may provide that if the person nominated to exercise the power is not available to do so (whatever that may mean) it may be exercised by some other nominated person; and, if that person is not available, by a nominated third person,' and so on, but it may not provide for the joint exercise of the power.

A citizen who is faced with the difficulty of making a decision about a medical power of attorney may feel much more comfortable about appointing a medical agent if he or she is able to appoint two or three persons to act jointly together. Why should that not be allowed? Of course, there is the difficulty of a disagreement existing between those, but that is no different from the situation where there are two parents who disagree. But the person who appoints the attorney may feel much more comfortable that the right decision will be taken: that one of the attorneys may not act out of malice or incompetence by having to make the decision in conjunction with one or more attorneys. So, I think it is most unwise to say that someone may not appoint any more than one attorney at the one time. If a person wants to do it, why not let them

I know that in the second reading speech in the other House it was stated that it would be traumatic for the medical practitioner if there were two attorneys who are arguing about the decision that should be made, but that is part of life. I would have thought it was preferable to have an argument about that than for one person who may act unwisely or incompetently to make the decision without question. However difficult it may be for medical practitioners, they are there to do a job and it is the life and interest of the patient that must be paramount. If there is difficulty caused by a debate about what decision ought to be taken, I say, 'So be it.'

The other difficulty with the power of attorney is that there is no provision for revocation. It seems to me that somewhere that has to be addressed. In my view, there has to be both a formal mechanism for revocation and for a situation where the patient may say, 'I don't want you to act.' The law in relation to a general power of attorney—not an enduring power but a general power of attorney—is that an attorney may not act contrary to the wishes of the person granting the power. Once the person ceases to become mentally incapacitated, the person exercising the general power may not do so.

The enduring power of attorney (and this is the reason for the enduring power of attorney to be brought in under the Powers of Attorney and Agency Act) provides that, notwithstanding mental incapacity, the enduring power will continue. Nevertheless, the person who is appointed to exercise the power must act in accordance with the wishes of the person granting the power and in accordance with the common law and the general law relating to the way in which attorneys may act.

There is nothing in this Bill to suggest that there is that body of general law which applies to the way in which a medical agent may be required to act, even if consistently with directions given in the medical power of attorney.

The other point that has to be noted is that, with respect to enduring powers of attorney under the Powers of Attorney and Agency Act, it is still possible for the Guardianship Board or the Supreme Court to override the enduring power. It is less likely to happen that someone will challenge the enduring power of attorney, but the prospect is always there that the challenge may be instituted.

I have seen instances where a person who has granted an enduring power becomes incapable of exercising responsibility for his or her affairs, and an order is made by the Guardianship Board overriding the enduring power of attorney. So, it can be something of a safety net, but it can also be something of a bludgeon. In this Bill there is no provision for an overriding oversight over the way in which a medical agent may act, and that is undesirable because the moment you have a person

who is appointed as a medical agent and becomes unaccountable other than for the immediate exercise of the power, you at least open the way for abuse of the exercise of that power. In situations where the medical attorney may be acting in disregard for the interests of the patient, who is granted the power, where the person may become incompetent, it seems to me that there has to be some general oversight.

In relation to enduring powers of attorney there is, in the Powers of Attorney Agency Act, provision for powers of revocation. So, in relation to a medical power of attorney there needs first of all to be some recognition that it can be revoked. There also needs to be a recognition that the Bill provides:

> A medical power of attorney—
>
> (a) authorises the agent, subject to the conditions (if any) stated in the power of attorney, to consent or to refuse to consent to medical treatment if the person who grants the power is incapable of making the decision on his or her own behalf.

That does not deal specifically with the situation where the person, at the time the decision was exercised, may have been incapable of making the decision—that is mentally incapacitated—but subsequently regains periods of lucidity. In those circumstances this Bill, as it purports to be a codification relating to medical powers of attorney, does not address the problem of whether the patient who becomes lucid is then capable of, or able to revoke, the decision that was taken, or even to revoke orally the power of attorney. Those issues do need to be addressed as they are important ones.

Can the patient override? I raised this somewhere in discussion and someone said 'Well, it's only meant to be used when someone is unable to make a decision.' But that is only half the answer. The other half of the question that has to be answered is: what happens if the patient possibly regains consciousness, and, as I say, becomes lucid again? What is the status of the original decision and what are the rights of the patient in those circumstances? That certainly does need to be addressed.

Another issue that needs to be addressed is the conflict between the objects, and clause 7(6) where one of the objects is to provide medical powers of attorney under which those who desire to do so may appoint agents to make decisions about their medical treatment when they are unable to make such decisions for themselves. Whereas, in clause 7(6)(a) provides:

> The person who grants the power is incapable of making the decision on his or her own behalf.

I would suggest that there is a distinction between a person who is incapable of making the decision on the one hand, and on the other, a person who is unable to make a decision.

There is a difficulty with the definition of extraordinary measures' because that definition refers to those measures and provides:

> In relation to a person suffering from a terminal illness where the medical treatment supplants or maintains the operation of vital bodily functions that are temporarily or permanently incapable of independent operation, but does not include medical treatment that forms part of the conventional treatment of an illness and is not significantly intrusive or burdensome.

A person's vital bodily functions may be temporarily incapable of independent operation, such as someone suffering from a kidney disorder for example, but in respect of extraordinary measures should it be possible to determine the issue on the basis of only temporary incapacity in respect of a bodily function? What does 'significantly intrusive or burdensome' mean? My colleagues, who are medical practitioners, can deal with that in a medical context, but 'intrusiveness' in the legal context must surely mean something which may be inserted into a cavity. We talk, if I might draw perhaps an inappropriate analogy, about intrusive body searches in the prison systems and by customs officers, and that is not a medical procedure but is merely inserting the appropriate instrument or finger into a bodily cavity. Is that to be the basis upon which the definition of 'extraordinary measures' is to be determined, or is it something more than that? Is it the insertion of a catheter? I know this has been raised, but I want to reinforce the concern I have about what 'intrusiveness or burdensome' really means in the context of extraordinary measures. Then, of course, they are qualified by the word 'significantly' and that is a very difficult matter to determine, more so when there is a situation of emergency which has to be addressed.

I will refer to a later definition of 'parent', because 'parent' includes a person *in loco parentis*. That person, while standing in the relationship of a parent, may not formally be a guardian. What is the extent to which that person is to have authority? The words 'terminal phase' are defined as:

> A terminal illness means the phase of the illness reached when there is no real prospect of recovery or remission of symptoms...

That can be assessed in medical terms, but in legal terms that is again a difficult decision to take and a difficult definition to interpret. The words used are 'on either a permanent or temporary basis'. Again, the use of the word 'temporary' qualifies that in a way which may be regarded as unsatisfactory.

Under clause 7(6)(b)(i) the agent is not authorised to refuse the natural provision or natural administration of food and water. I would like to know what 'natural provision' or 'natural administration' means. I have always thought that the natural administration of food is when you eat it through the mouth and chew it but, in medical terms, it may mean something else. I suppose the medical practice needs to be taken into consideration in interpreting the matter legally, but I would suggest that there is some difficulty in interpreting what 'natural provision' or 'natural administration' of food and water may mean. Of course, what does the word 'food' mean? Is that something which we might ordinarily regard as food but which, in medical terms, might take a different form from the food that we consume on a daily basis: drips and so on? There are problems of definition in those descriptions.

I am not by any means dealing with all the issues, just flagging them. I do not provide the answers at this stage. They are issues that members need to consider, along with all the other issues that have been raised. In clause 10, again, there is a reference under emergency medical treatment to a patient being incapable of consenting, and in those circumstances a medical practitioner may lawfully administer a medical treatment to a person. That probably, in medical practice terms, is more easily interpreted and administered than in the context of earlier

provisions of the Bill. Under clause 10(3), if a medical agent has been appointed and is reasonably available to decide whether the medical treatment should be administered, the medical treatment may not be administered without the agent's consent.

The Hon. R.J. Ritson: Even if it is life saving.

The Hon. K.T. GRIFFIN: Even if it is life saving. And it is a question of what 'reasonably available' means. Does it mean a quick phone call to someone at Christies Beach who is known to be the medical agent but, even though the medical practitioner discusses the issue on the phone, does it mean that discussion on the phone is adequate? Does it mean that, if the agent cannot get into the hospital by reason of distance, the agent is not then reasonably available? This question of consultation on the phone is an important one. How does the medical practitioner identify that the person he or she is talking to is in fact the medical agent?

The Hon. R.J. Ritson: What about when an ex-wife and a current wife both claim to be an agent, and they are in dispute, and one stands to inherit?

The Hon. K.T. GRIFFIN: Quite obviously, that is a difficulty, and it may be that two medical powers of attorney may have been granted at different times. One presumes that the later will revoke the earlier, but I do not think that is clear, by any means. If no such medical agent is reasonably available but a guardian of the patient is so available, the medical treatment may not be administered without the guardian's consent, so here we have the medical agent taking a decision in priority to a guardian. I should have thought that was generally wrong in principle.

One needs to draw attention to clause 10(5), because, in the circumstances of a child being a patient and a parent or guardian of the child is reasonably available to decide whether the medical treatment should be administered, the parent's or guardian's consent to the treatment must be sought. But the child's health and wellbeing are paramount and if the parent or guardian refuses consent the treatment may be administered despite the refusal, if it is essential to the child's health and wellbeing. If that is good enough for a child, why is it not good enough for an adult? Why should the medical agent be able prevent that sort of treatment in relation to an adult?

It really suggests another reason why you cannot have a situation where the medical agent's decision is final and not reviewable, even if there is life saving treatment or there are treatments essential to the child's health and wellbeing. I have concern about clause 13. This will be a particularly difficult clause to administer in practice, particularly where the incidental effect of treatment authorised by a medical agent is to hasten the death of the patient. Again, I defer to my medical colleagues for some advice in respect of that, but it seems to me that it will be a very difficult decision to take and borders on the support by the law of the administration of treatment which does hasten the death of the patient. I have concern about that.

The Hon. R.J. Ritson: The Insurance Council has an interest in that, but it does not know and has not responded.

The Hon. K.T. GRIFFIN: The problem with this legislation is that many people in the community have an interest in it who may have not become familiar with it. It has not had a lot of publicity through the media and there are only a limited number of people to whom you can send the Bill. We have a responsibility to make decisions where we are concerned that they have adverse effects upon groups in the community, even though those groups may not have responded.

There is a particular concern with other parts of clause 13 of the Bill. We have a reference later to a patient's representative. As far as I can see, there is no definition of a patient's representative, and that concerns me. There are other issues in that clause which impinge upon the question of whether or not a medical practitioner should have taken particular steps to preserve life. There is this provision:

> (3) For the purposes of the law of the State—
>
> (a) the administration of medical treatment for the relief of pain or distress in accordance with subsection (1)—
>
> that is even where it might hasten the death of a patient—
>
> does not constitute a cause of death; and
>
> (b) the non-application or discontinuance of extraordinary measures—

and I have already referred to some of those, particularly where there might be a temporary dysfunction of bodily function—

> ...does not constitute a cause of death.

Again, we have a reference:

> A direction may only be given under subsection (2) by a patient's representative if the patient is incapable of making decisions about his or her medical treatment.

That again raises concern about incapacity and what happens if there is an immediate but temporary incapacity—

The Hon. R.J. Ritson: An anaesthetic.

The Hon. K.T. GRIFFIN: May be an anaesthetic. I think the Bill is fraught with difficulties. I know that those who propose it are persons of good will and good intentions but I think that those good intentions cloud some of the important issues, both ethical and legal, that need to be addressed in the consideration of the Bill. Because this is a conscience issue I hope that the Bill is not rushed through the remaining stages of this session. Of course, it will raise an interesting question about what happens in a deadlocked conference if, because it is a conscience issue, members are going all over the place on particular amendments.

I think there will be good sense if this Bill continued to be debated and is left on the table until the next session. We can restore it to the Notice Paper under the Constitution Act. It is quite proper to do that and we can then take up from where we left off on this occasion. As the Hon. Dr Ritson has said, there are people out in the community who have an interest in it. There are people in the community who may not have recognised that interest and there are people in the community who do need to make careful consideration of it.

As I said, the Law Society has given me a bundle of papers only in the past couple of days and I have not had an opportunity to come to grips with all of that. Admittedly, some of it has been around in one form or another for some time, but they raise important issues, some of which I have touched upon. All of those issues have to be carefully considered. There is no great urgency for the Bill. I know that there are those with

passionate views in favour of the legislation, but I do not think passion should outweigh careful and mature judgment and consideration of this legislation. That is not to say, I should hasten to add, that those with a passion for it are acting immaturely.

I certainly do not intend to convey that but I think we ought to be careful about rushing this sort of legislation through where it impinges upon the lives and interests of ordinary South Australians. I support the second reading of the Bill. I hope that it is not rushed through the remaining stages of the Parliament where there is already a heavy Government legislative program that requires us also to give careful consideration to important issues that might distract us—

The Hon. R.J. Ritson: We can see the importance of it because the pressure we are under means that there is only one member on the other benches.

The Hon. K.T. GRIFFIN: May be so, but I think all members will read the *Hansard* of the debate and consider carefully the issues I and other members have raised. I was suggesting that I do not think this matter should be rushed: it is important and it ought to be considered carefully. We have got five or six sitting days left, encompassing mornings, nights, evenings, early mornings, Fridays and Thursday nights to deal with Government legislation. Some of us—the Hon. Mr Gilfillan, the Hon. Mr Elliott and the Hon. Mr Feleppa and others—have responsibilities in relation to those other Bills that will prevent us giving the sort of attention to the Committee stages of this Bill that it requires. I support the second reading.

The Hon. I. GILFILLAN: I also support the second reading and point out to the Hon. Trevor Griffin who I am sure is fully aware of it, that the timing of the Bill is in the hands of the members of this Chamber: we can determine our own fate in this respect. I acknowledge that the issues that are addressed are important and actually do point towards a humane approach which, I think, with goodwill and diligence can be achieved. There are enormous risks where critical decisions regarding medical care and the retention of life are involved, and I do not intend to be drawn into an exhaustive debate about that.

However, I have a view of the sanctity of life. The sanctity of life is a term that requires adjusted definition as technology and new processes come to be. That is a challenge not only to this Parliament but to the community, the churches and all who are students involved in assessing what is in fact an improvement in the quality of life of members of our society. However, enough of that theorising. The actual Bill is being dealt with in specific detail by my colleague the Hon. Mike Elliott and in most of the areas that he is addressing he and I share the same view. I have had some letters which I want to read into *Hansard* because, even if I do not agree entirely with their contents, they provide important background both to me and to others in this place in eventually coming to the right decisions concerning amendments to the Bill.

Before I do that, one matter which has particularly focused my attention—and although other correspondents have mentioned it as well—it is a matter about which I have particularly thought. I refer to clause 7(6)(b) as to a medical power of attorney, as follows:

> ...does not authorise the agent to refuse—
>
> (i) the natural provision or natural administration of food and water; or
>
> (ii) the administration of drugs to relieve pain or distress.

I found myself in a quandary as to how one should deal with a person who is expected not to recover to a conscious form of life but who is receiving food and water—not necessarily by artificial means—where the life is continued in the person purely because of continued administration of food and water. I will come back to that issue, but I must point out to the Council that that is one clause to which I will be moving an amendment. The first letter to which I refer is one that I received from Professor Garry Phillips, Chairman, Department of Anaesthesia and Intensive Care. Addressed to me, the letter states:

> Re: Consent to Medical Treatment and Palliative Care Bill. Is there not a major difficulty created by subsections (3) and (4) of section 10 (Division 4) of this Bill in that an appointed medical agent may prevent the carrying out of a life saving procedure on a person who is not terminally ill, despite the opinion of two medical practitioners that the procedure should be carried out, for example, following an accident.
>
> The Natural Death Act had a number of deficiencies, but the saving clause 7 (page 2) was I think a good one—is there need to include it in the new Act?
>
> The Consent to Medical and Dental Procedures Act 1985 seemed to me to be reasonable—is the new Act intended to repeal the Mental Health Act Amendment Act 1985, which is where many of the problems associated with treatment of the incompetent arise?
>
> Yours sincerely

I have considered those points to a certain extent and I would like to deal with them briefly in this second reading contribution. I refer to Division 4—Emergency Medical Treatment—and clause 10, as follows:

> (3) If a medical agent has been appointed and is reasonably available to decide whether the medical treatment should be administered, the medical treatment may not be administered with the agent's consent.
>
> (4) If no such medical agent is reasonably available but a guardian of a patient is so available, the medical treatment may not be administered without the guardian's consent.

Do not the subclauses create a major difficulty in that 'an appointed medical agent may prevent the carrying out of a lifesaving procedure on a person who is not terminally ill, despite the opinion of two medical practitioners that the procedures should be carried out', as the letter said, for example, 'following an accident'? I note that in Division 2, clause 7(6) provides:

> (a) authorises the agent.. .to consent or to refuse to consent to medical treatment if the [assumed patient] is incapable of making the decision ...; but
>
> (b) does not authorise the agent to refuse—
>
> (i) the natural provision of natural administration of food and water; or
>
> (ii) the administration of drugs to relieve pain or distress.

That is the matter to which I referred prior to reading the letter. I intend placing an amendment on file dealing with that. The only provision in the Bill that allows treatment to be carried out despite a refusal of consent is in division 4, clause 10 (5), which provides for emergency

treatment of children. The situation in relation to a person in the terminal phase of a terminal illness, and one who has been admitted to hospital for emergency treatment is arguably different. A person who has a terminal illness is a person who has had a professional assessment of probable date of his or her entry into the terminal phase and, so, a probable date when death will supervene. Such a person and his or her guardian, guardians, agent or agents will have had time to adjust to the necessity of making decisions dealing with the continuance or, indeed, the cessation of treatments.

In an emergency situation, for instance, that of a person brought into the casualty department of a major hospital suffering injury sustained in a vehicle accident, the guardian or agent, if they are reasonably available, has had no time to make a reasoned or logical judgment on whether treatment for the injury should be commenced or continued. Current medical practice would be that the opinion of the attending medical/surgical staff as to the treatment or treatments would prevail. In such an unpremeditated situation it is possible that the decision of a guardian or agent may be emotionally conditioned by the appearance of the physical injuries sustained and, therefore, less than reasonable or logical in the short term. In such a situation there is an argument for allowing greater strength to be given to the opinion of the medical practitioner in charge of the case.

A second medical opinion, if reasonably available, could be required before treatment is carried out and a medical referee—this could be a formal appointment of the head of department or other senior medical practitioner on the staff of the hospital—could be given the authority to terminate treatment if such was the reiterated wish of the guardian or agent, if such wish were restated after a sufficient lapse of time to allow for emotional shock to give way to reasoned judgment on the part of the guardian or agent.

That does beg the question, of course, of what is to be a reasonable time. However, I think that this is one way of looking at dealing with this situation. Such an authority should not have the effect of negating the provisions included in the Bill for the treatment of children under the Act. In the Natural Death Act a clause that is referred to as a 'saving' clause (section 7) states:

(1) Nothing in this Act prevents the artificial maintenance of the circulation or the respiration of a dead person—

(a) for the purpose of maintaining bodily organs in a condition suitable for transplantation, or

(b) where the dead person was a pregnant woman for the purpose of preserving the life of the foetus;

(2) Nothing in this Act authorises an act that causes or accelerates death as distinct from an act that permits the dying process to take its natural course.

As the Natural Death Act 1983 is repealed by the Consent to Medical Treatment and Palliative Care Bill—this Bill—the provisions of this saving clause, as I understand it, will be lost unless they are included in this new Bill. There may be others who have knowledge which can set that concern at rest, and I will be looking to hear the answer to that. If not, then I think an appropriate amendment would be to ensure that a similar saving clause is inserted in this Bill.

The repeals in the description of the new Bill are only of the Natural Death Act 1983 and the Consent to Medical and Dental Procedures Act 1984. As the Mental Health Act 1977 incorporates the Statutes Amendment (Consent to Medical and Dental Procedures and Mental Health) Act 1988, and the Consent to Medical and Dental Procedures Act 1984 is repealed by the new Act, there may be part of the Mental Health Act 1977 which would be affected by the new Act. This, if it is indeed affected by the new Act would appear to be Part IVA of the Mental Health Act 1977, 'Consent to medical or dental procedures carried out on persons suffering from mental illness or mental handicap'. Section 28g deals with emergency medical procedures carried out on persons unable to consent and it provides:

(1) Where a medical procedure or dental procedure is carried out in prescribed circumstances by a medical practitioner or a dentist on a person to whom this part applies, the person shall be deemed to have consented to the carrying out of the procedure and the consent shall be deemed to have the same effect for all purposes as if the person were capable of giving effective consent.

(2) Prescribed circumstances exist for the purposes of subsection (1) if—

(a) the medical practitioner or dentist carrying out the medical procedure or dental procedure

(i) is of the opinion that the procedure is necessary to meet imminent risk to the person's life or health; and

(ii) has no knowledge of any refusal on the part of the person to consent to the procedure, being a refusal made by the person while capable of giving effective consent and communicated by the person to the medical practitioner or dentist, or some other medical practitioner or dentist;

(b) the opinion of the medical practitioner or dentist referred to in paragraph (a) is, unless it is not reasonably practicable to do so having regard to the imminence of the risk to the person's life or health, supported by the written opinion of one other medical practitioner or dentist; and

(c) in the case of a medical procedure not being a sterilisation procedure of termination of pregnancy, or dental procedure to be carried out on a person who is less than 16 years of age, no parent of the person is reasonably available or, being available, the parent, having been requested to consent to the carrying out of the procedure, has failed or refused to do so.

I do not expect members to recall subsection 2(a)(ii), but that refers to where the medical practitioner or dentist has no knowledge of any refusal. It raises the query about no provision for the seeking of any previous statement regarding the refusal of treatment as included in this section.

For the purposes of the new Bill, I ask whether it is considered that such should be specifically required or, as it is in emergency treatment—which is the subject under discussion—would such a requirement be considered to adversely affect the commencement of required treatment? As I pointed out earlier Professor Gary Phillips of Flinders University identified the Mental Health Act Amendment Act 1985 as one where many of the problems associated with treatment of the

incompetent arise. This being so, would it be useful to discuss this issue with a view to consideration of ways of removing these problems that he has identified? I feel that that is certainly part of the obligation of a responsible treatment in this Bill.

The other approach I wanted to deal with briefly is from the Roman Catholic Archbishop of Adelaide (Most Reverend Leonard Faulkner). The Archbishop's letter refers to this Bill and states:

As you know, this Bill has been passed in the House of Assembly and is now to be debated in the Legislative Council. Again I wish to congratulate the select parliamentary committee for its consultation and final report.

You may be aware that, prior to the Bill being debated in the last session, the South Australian heads of Christian Churches agreed to a number of amendments drafted by the Minister of Health and the Hon. Jennifer Cashmore, who were sponsoring the Bill on behalf of the select committee. However, several other amendments moved in the course of the debate during the Committee stage were not passed...

I will not read the rest of the text of the letter. I will go straight to the matters that were of concern, as follows:

I and my advisers are anxious that the Bill be further improved by some amendments which may well be proposed in the debate in the Upper House particularly:

(a) Clause 3, line 18 after 'futile' insert 'while preserving the prohibition against assisted suicide'.

(b) Clause 6(6)(b), leave out 'natural provision or natural' and insert 'reasonable provision or'.

I remind honourable members that that is the clause where I have already indicated I am looking at an amendment. I note that an amendment relating to that, although it wrongly refers to clause 7, unfortunately—it is clause 6—has just been put on file. The letter continues:

(c) Clause 6(6)(b), insert '(iii) medical treatment that is part of the conventional treatment of an illness and is not significantly intrusive or burdensome'.

(d) Leave out clause 6(7) and substitute

(7) The powers conferred by a medical power of attorney must be exercised—

(a) in accordance with any lawful directions contained in the medical power of attorney; and

(b) with due diligence; and

(c) in the best interests of the patient.

(e) Appropriate amendment to clause (7) providing for the supervisory jurisdiction of the Supreme Court.

As the Archbishop says in his letter to me, the reasons for the amendments were canvassed in the House of Assembly, as reported in *Hansard.* My assistants have had an opportunity to have a look at the *Hansard* and to make some observations about how those amendments were dealt with in the Assembly. I do not intend to go through those.

The Hon. R.J. Ritson interjecting:

The Hon. I. GILFILLAN: The interjection by the Hon. Dr Ritson was that the Guardianship Board is a much better suggestion than the Supreme Court in relation to the amendment to clause 7. I take note of his comment. I have not had a chance to deliberate on that but, as previous experience has shown me, it is well worth while paying close attention to any recommendation from the Hon. Dr Ritson. I may not finish up agreeing with it, but it is always worthwhile paying attention.

I have actually identified the amendments, because I think they were important amendments to be considered in this place. In this second reading contribution I am certainly not indicating which of those I am likely either to move or support; I am raising them as issues which must be considered.

I received a further letter from the Lutheran Church. The letter is signed by Dr Robert Pollnitz, Chairman, Commission on Social and Bioethical Questions, Lutheran Church of Australia. It states:

I believe that you have a special interest in this Bill and that it is to be debated in the Upper House shortly. Mr Martyn Evans kindly invited me to the Heads of Churches meeting on 16 February. In my opinion the recent changes to the Bill are pleasing, in that they emphasise the value of human life and that treatment should be given with the primary intention of relieving pain or distress, which overcomes some of my concerns with the previous draft of the Bill. (see article enclosed).

He enclosed an article entitled 'Ethics: Mercy in "good" palliative care, not euthanasia' which was published in *Australian Medicine* on 1 February 1993. Those members who are interested can either ask me for a copy or have a look at my copy of it. I continue with the letter as follows:

However, I believe that the Bill would be improved by providing an avenue of appeal where the decision of a medical agent appears not to be in the best interests of the patient. Being human, agents must be capable of error. One can easily imagine an agent showing poor judgment under stress and seeking to impose a harmful decision. A meek agent might bow to the duress of a dominant partner eager for personal gain, or rarely an agent might even seek to act with malice towards a patient.

Page 6, section 7, line 12 of the revised Bill provides that an agent is not authorised to refuse 'the natural provision of food and water'. I have some problems with the word 'natural', which might lead to an agent refusing nasogastric feeding in situations where this is a reasonable and proportionate treatment. Given an avenue of appeal, a doctor could argue that such a decision was not in the best interests of the patient.

I will value your thoughts on these points, and will follow the debate in the Upper House with interest.

I did have further contact with Dr Pollnitz a little later. On 11 March, six days later, he wrote to me again, as follows:

Thank you for your telephone call of yesterday, and I am pleased to hear of your efforts to improve the Bill.

You have a copy of my commentary on the previous draft of the Bill for the 1 February issue of *Australian Medicine.* Dr Rodney Syme of the Victorian Voluntary Euthanasia Society has written a response, and for your interest I will attach a copy of this and of my reply.

Honourable members may find both those interesting and I would like to read them. This is from Dr Rodney Syme, Ringwood, Victoria. It states:

Circumstances permit advance directive.

I wish particularly to take issue with one aspect of Dr Robert Pollnitz's observations on the proposed Consent to Medical Treatment and Palliative Care Bill, 1992 (SA).

(Australian Medicine, 1/02/93, p.23)

He doubts that 'an advance directive can be more than a general guide to a patient's wishes' and that it is 'dubious if any person can express a reasoned decision now to cover future

circumstances that cannot be foreseen'. I totally disagree with this statement. As a doctor, my knowledge of pathology allows me to state categorically that I would not wish to endure:

(i) In an established persistent vegetative state of coma.

(ii) In a progressive dementia, specifically once I had reached a stage where I failed to recognise my immediate family.

(iii) Following a dense stroke which left me permanently and severely hemiplegic and aphasic and unable to communicate.

I believe many doctors would agree with me, perhaps even Dr Pullnitz. Why should not an advance direction in these clear circumstances allow:

(i) A non-initiation of life sustaining treatments such as CPR—

The Hon. R.J. Ritson: Cardio pulmonary resuscitation—starting the heart and artificial respiration.

The Hon. I. GILFILLAN: In other words, the artificial restarting of the heart.

The Hon. R.J. Ritson: I am sorry about the interjection, but a lot of people would declare at age 60 that if they ever got demented they would not want to live but find that when they do become demented they do want to live.

The Hon. I. GILFILLAN: I am not sure whether *Hansard* picked up the interjection. It covered the observation by Dr Ritson that prior to 60 some people would say that they would not want to live if they experienced dementia, but having reached 60—

The Hon. R.J. Ritson: Not exclusively 60.

The Hon. I. GILFILLAN: I realise that that is an arbitrary figure just chosen for the case—but when they reach that age, whatever it may be, they change their mind, even if they are in some form of dementia. I would like to read this again so that it stands clearly as it does in this text. It states:

I believe many doctors would agree with me, perhaps even Dr Pollnitz. Why should not an advance direction in these clear circumstances allow:

(i) A non-initiation of life-sustaining treatments such as CPR, other life-supporting drugs or antibiotics.

(ii) Cessation of nutrition and hydration, but with appropriate sedation and appropriate nursing care, if a consensus of doctors, nurses and family are in agreement.

This principle of withdrawal of life support is already supported in acute medicine (in intensive care units), without the advantage of an advanced directive. For no good reason, we are reluctant to extend this practice to severely and permanently impaired chronic situations. Surely, well constructed advanced directives would be of great assistance in this dilemma.

Dr Robert Pollnitz replied to Dr Syme, and this is the text of his reply:

The legislators working on the SA Bill largely agree with Dr Syme. The latest revision of the Bill tabled in Parliament on 16 February will allow the patient to list the conditions of his/her power of attorney and any directions given to the chosen agent. When the patient becomes incapable, the agent is authorised to refuse any treatment other than 'the natural provision of food and water' and 'the administration of drugs to relieve pain or distress'.

My concern about the value of an advanced directive is related to the likely failure of many people to change their directive as their views change over the years. At age 70 years, how many of us will think of an acceptable degree of disability in exactly the same terms as we did at age 35? Dr Syme raises the issue of cessation of feeding in coma and similar cases. Where there is a clear advance directive from that patient, I accept the right to refuse tube feeding. Where there is no such directive, I believe that it is ethically wrong to withdraw food and fluids from a patient in a persistent unconscious state. To withhold food and fluids with the intention of causing death is deliberate killing by omission. To judge a human life as not worth living is discrimination on the grounds of disability.

The Hon. Carolyn Pickles: He has not read the House of Lords' deliberation, obviously.

The Hon. I. GILFILLAN: That is a useful interjection from the Hon. Carolyn Pickles observing that Dr Pollnitz obviously has not read the House of Lords' latest contribution. I must confess that I have not done so, either. The letter continues:

One cannot argue that the feeding is futile, for it is preserving life, and an unconscious patient should not find tube feeding burdensome. This does not mean that life must be prolonged at all costs, and where such patients develop a life-threatening complication, I agree that intrusive methods of resuscitation are not appropriate. Many doctors claim to oppose euthanasia and yet argue that feeding may be withdrawn. To accept that first step leads on to a path: watching someone die of starvation is unpleasant, so let's give them a lethal injection. That solves the problem of A. Now B with the dementia is almost as sad, and C with the Down's syndrome has her bad days too. Then there's old Dr D in the corner, he's been raving a lot lately...

That letter concludes there, and so does my second reading speech. I repeat that I believe this Bill should not be rushed through Parliament, and if it is incomplete and in an inadequate form by the time we come to the end of this session I do not think there would be much done for it to carry over. It behoves me to repeat as simply as I can my basic position, and that is that there is an obligation to observe the sanctity of life, but because of the changed circumstances criteria that were applicable 20, 30, 40 or 100 years ago no longer apply. The line I draw is that where there is no real prospect of a patient's enjoying a reasonable quality of life, or recovery to that stage, there certainly is no argument for continuing artificial means of life support. So much is clear.

The Hon. R.J. Ritson: The principle is, 'Let not the treatment be worse than the disease.'

The Hon. I. GILFILLAN: Yes. I will leave that interjection as it is a little bit too confusing for me to deal with at this stage. However, the dilemma that does appear in this Bill for me is: what is the natural provision of food and liquid? On that line I would invite the honourable members to look at my amendment which I see is now on file. I will not go through it. It is there, and it is an attempt to get a balance that it can be withdrawn where there is no likelihood of prospective recovery, but with the proviso as stated in the amendment, which is in fact an amendment to clause 6 and not clause 7. With that, I indicate support for the second reading.

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

YOUNG OFFENDERS BILL

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

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

That this Bill be now read a second time.

As this Bill has been dealt with in another place, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The *Young Offenders Bill* is one of three Bills which will replace the *Children's Protection and Young Offenders Act 1979.* The other two are the *Youth Court Bill 1993* and the proposed *Children's Protection Bill 1993.* The *Youth Court Bill,* together with the *Education (Truancy) Amendment Bill,* are being introduced concurrently with this Bill.

The current *Children's Protection and Young Offenders Act* 1979 resulted from a 1976 Royal Commission into the South Australian Juvenile Justice System and when first introduced, was considered to be highly innovative. However, despite numerous amendments, the Act has not been able to keep pace with, nor respond to, the rapid structural and attitudinal changes which have taken place in society over the past fifteen years. Hence, it no longer meets community expectations about how young offenders should be treated. A complete overhaul of the juvenile justice legislation is therefore required.

The Bills currently before the House are based on the recommendations of the Select Committee on the Juvenile Justice System which was set up on 28 August 1991 in response to growing community concerns about juvenile offending. Evidence presented to the Committee during its extensive period of enquiry identified a number of problems.

There is a widespread public perception that the current system of juvenile justice does not deal effectively with young offenders, especially those who commit serious offences or who are long-term recidivists. The penalties handed down by the Children's Court are considered to be too lenient in many cases, with young offenders not being held accountable for, nor made to confront the consequences of, their actions. As a result, it is believed that the system fails to deter young people from re-offending and fails to adequately protect the community from such criminal behaviour.

Long delays in processing exacerbate this problem. Evidence placed before the Committee indicated that in some cases over six months elapsed before a matter could be finalised. Such delays are undesirable for a number of reasons. Most importantly, young offenders do not experience immediate consequences for their actions and any impact which the final sanction may have had on them is lost. Delays also entail a significant waste of already limited court resources, and unjustifiably extend the time which victims are required to wait for the delivery of justice.

The current system fails in other respects. It does not, for example, take into account the needs of the victim. Parents are also largely excluded, with the result that their authority is undermined and they are not required to accept responsibility for their child's behaviour. The young offenders themselves play only a minor role in the process. The presence of lawyers and social workers in court effectively relegates them to the role of bystander which further shields them from the consequences of their actions.

These and other criticisms make it clear that a complete reassessment of the way in which young offenders are dealt with in this State is urgently needed. The *Young Offenders Bill* has been prepared in response to this need.

This Bill reconstitutes the juvenile justice system in South Australia. It applies to young people aged 10 to 17 inclusive.

The aims of this Bill are to;

- ensure that young people are held accountable for their behaviour and experience immediate and relevant consequences for their criminal acts
- increase both the severity and range of penalties available at all levels of the system
- enhance the role of police in the juvenile justice system
- empower families to play a greater role and to take more responsibility for their children's behaviour
- protect the rights of victims to restitution and compensation, and
- allow victims, where appropriate, to confront the young offenders and make them aware of the harm which they have caused.

To achieve these aims, the *Young Offenders Bill* redefines the philosophy on which the juvenile justice system is predicated. Under the current *Children's Protection and Young Offenders Act,* the primary emphasis is on the rehabilitative or welfare requirements of the child, while the need to protect the community and to hold young people accountable for their criminal acts is taken into consideration only "where appropriate". Unlike the adult system, the principle of general deterrence cannot be applied by the Children's Court when sentencing a young person.

The Bill reverses this emphasis in order to ensure that the needs of victims and the community are given appropriate precedence. Section 3 of the Bill states that persons exercising jurisdiction under this legislation must take account of three factors: first, the need to make the young person aware of his or her obligations under the law and of the consequences of breaching the law; second, the need to protect the community and individual members of it against the violent or wrongful acts of the youth; and third, the need to impose sanctions which are sufficiently severe to provide an appropriate level of deterrence. The welfare needs of the child are still considered relevant, but these are to be taken into account only where the circumstances of the individual case allow.

The Bill also effects a major restructuring of the juvenile justice system itself. In accordance with the aim of returning police to a more central role, a system of formal police cautioning is introduced. At the initial point of contact with a youth suspected of having committed an offence, the police will have the option of either informally warning the youth on the spot if the matter is extremely minor, or issuing a more formal caution, which will be officially recorded. These records will be admissible as evidence of prior offending in the Youth Court but will not be admissible in proceedings relating to offences committed by the individual as an adult.

The formal caution may take the form of a verbal warning delivered to the young person in the presence of his/her parents or guardians. Where appropriate, it may also involve a "warning with penalty", whereby the police officer can require a young person to apologise and/or make reparation to the victim, undertake up to 75 hours of community work, or take part in any other activity which the officer considers appropriate to the case. (However, in determining such outcomes, the cautioning officer must take into account the sentencing practices of the Youth Court to ensure that the penalty imposed is not greater than that which would have been imposed by a Court.) Failure to fulfil an undertaking at this level results in referral to either a family conference or the Youth Court. The aim is to increase the range of options available to police so that they can deal with relatively minor matters quickly and effectively without the need for formal judicial processing.

To ensure that the legal rights of the young person are protected at this level, the Bill stipulates that before a formal caution can be administered, the youth must be informed of the charges alleged against him/her and of his/her right to obtain legal advice. The cautioning officer must also ensure that the youth understands the nature of the caution and the fact that it may be submitted as evidence of prior offending in any subsequent juvenile court proceedings. The young person must also admit the allegation. If he/she refuses to do so, the matter is automatically referred to the Youth Court for adjudication. With or without an admission of guilt, the young person may also request that the matter be referred to court if he/she so prefers.

The fact that an admission of guilt is a prerequisite for diversion to a police caution could be criticised on the grounds that it is coercive; that is, a young person may be pressured into admitting an offence which he/she did not commit in order to avoid the stigma of a court appearance and the possible acquisition of a criminal record which such an appearance may entail. To avoid this situation, the Bill allows that if a young person denies the allegations and is subsequently referred to the Youth Court, that Court may, if guilt is subsequently established, refer the matter back to police for a formal caution. The youth will not acquire a court record or be subject to a court order and so will not be penalised for invoking his/her rights to due process.

As a second major structural change, the *Young Offenders Bill* abolishes the current system of Screening and Children's Aid Panels. Under the new legislation, the screening decision rests with the police. If they consider that a matter is too serious to warrant a police caution, they have the power to decide whether the youth will be referred to a family conference or to the Youth Court. Referrals to a family conference cannot be overturned. However, if a case is referred direct to the Youth Court, that Court may, if it considers the referral inappropriate, direct it back to either a formal police caution or a family group conference.

The abolition of Children's Aid Panels and their replacement by a family conferencing system represents a major shift in emphasis in the treatment of young offenders in South Australia. While there is some evidence to suggest that Aid Panels have been effective in dealing with first or minor offenders, they were not designed to respond to the moderately serious offender. Under the new system, the minor matters which previously would have been resolved satisfactorily by Aid Panels will henceforth be dealt with at an earlier stage, by way of police cautioning. A different pre-court diversionary procedure is therefore required — one which is able to deal effectively with those moderately serious matters which do not require a formal court hearing but which are too difficult for police to resolve.

In accordance with the recommendations of the Select Committee, the *Young Offenders Bill* establishes a system of family conferences, based on the system currently operating in New Zealand. Each conference is convened by an independent mediator, referred to as a Youth Justice Coordinator. His or her task will be to bring together, in an informal and non-threatening setting, those people most directly affected by the young person's offending behaviour and through a process of discussion and mediation, reach consensus regarding an appropriate outcome. Although attendance at each conference will vary, the young person will be required to be present, together with his/her parents or guardians. Any members of the extended family who may be able to contribute to the discussion may also be invited. The victim, together with any supporters she/he nominates, will also be able to attend if he/she so chooses.

Participation of the victim in the judicial process is a new concept in South Australia. Under the current system, victims are largely excluded — a fact which has generated considerable resentment and frustration. Family Conferences will rectify this by giving victims a central role in the process. They will be able to confront the young person and make him/her aware of the anger and hurt caused by the offending behaviour. The victim will also play an important role in determining the final outcome, thereby ensuring that his/her needs are taken into account. The New Zealand experience indicates that such participation is an important factor in the victim's healing process.

Family conferences will also allow parents to participate fully in the decision-making process. This will not only empower the parents but will also require them to accept responsibility for their offending children. The concepts of empowerment and responsibility are important. Many families of young offenders have either abrogated their responsibilities or have had effective authority over their children taken away from them by the current system, where decisions are made by professionals and where the wishes of parents are often not heeded. By contrast, decision-making in family conferences will rest primarily with the parents and the victims, with the professionals being there to give advice only when needed. These conferences will therefore provide an effective means for re-establishing parental authority, responsibility and discipline.

Another inherent advantage of the family conference is its ability to accommodate cultural diversity. A young Aboriginal offender, for example, will be able to invite members of his/her extended family, as well as other significant adults, including tribal elders.

The New Zealand experience indicates that the range of outcomes agreed to at family conferences are generally more innovative and diverse than those imposed by the Youth Court. Whereas the sentencing discretion of a Court is limited by statute, the outcomes reached at family group conferences will be subject to far fewer constraints, with the result that outcomes can be tailored to fit the specific circumstances of the case. It is expected that in most instances, the youth will be required to apologise or make restitution to the victim and up to 300 hours of community service can be imposed. However, to avoid inappropriately harsh outcomes at this level, the family conference must take account of sentencing policies in the Youth Court.

The acceptance of the young offender of the outcome of the conference is essential and vital to the process. If the conference fails to reach agreement, the matter will be automatically referred to the Youth Court. The police, whose presence at the conference is mandatory, will also have the right of veto if they consider that the outcome agreed to is inappropriate. To ensure that this right of veto is used responsibly, the Youth Court will have the power to overturn that veto and refer the case back to the conference.

As is the case with police cautions, records of a family group conference hearing will be admissible as evidence of prior offending in the Youth Court but not in an adult court once the person turns 18.

Youth Justice Coordinators will be appointed for an initial term of three years, during which time they will be responsible to the Senior Judge of the Youth Court.

With the establishment of family conferences, only the most serious offenders and long-term recidivists will need to be

referred to Youth Court. At the Court level, to ensure greater accountability, penalties have been increased and extended. The maximum period of detention has been raised from two years to three years, and the minimum period of two months has been abolished. Home detention for periods not exceeding 6 months has been introduced as a new sentencing option. The length of community service orders has been extended to 500 hours maximum. In contrast to the present legislation, the Bill does not recognise participation in recreational and educational programs as community work. Good behaviour bonds have also been abolished. Instead, the Bill gives the court greater flexibility in the type and range of conditions it can impose as part of an order. It will also ensure greater accountability by requiring a youth who has breached a specific order to be brought back to court for re-sentencing. Finally these new Court orders will allow the court greater flexibility in ensuring that the right of victims to restitution and compensation can be met.

The Bill places strong emphasis on parental responsibility. To this end, the Youth Court has the power to order the parents or guardians to attend hearings. If the young person is found guilty, parents can be placed on an undertaking to guarantee the youth's compliance with the conditions imposed on the youth, to take specified action to assist the youth's development and to report, as required, on the youth's progress. Parents may also be held liable for any injury or damage resulting from their children's offending behaviour. There will however, be appropriate checks and balances to ensure that parents who have acted responsibly but who, for reasons outside of their control have been unable to influence their children's behaviour, will not be penalised. The Court may also take into account the circumstances of the family when considering a compensation order against the parents. In particular, the impact of such an order on the circumstances of other children in the family will be considered.

As is the case under the current *Children's Protection and Young Offenders Act,* youths who are charged with murder will be automatically dealt with by the Supreme Court and if found guilty, will be liable to a mandatory sentence of life imprisonment. The *Young Offenders Bill* also streamlines the process whereby youths charged with serious offences can be transferred to the District or Supreme Court for adjudication and sentencing. Under the current system, an application for such a transfer can only be lodged with the approval of the Attorney General and must be heard by a judge of the Supreme Court. This process often involves lengthy delays. Under the proposed legislation, the application may be lodged by the Director of Public Prosecutions or a Police Prosecutor and may be determined by the Youth Court rather than the Supreme Court.

In those cases where, because of the gravity of the offence, a young person is committed for trial in the District or Supreme Court, that court has three options once guilt has been established. It may sentence the youth as an adult, or make any order which the Youth Court could impose, or refer the youth back to the Youth Court for sentencing.

In accordance with the notion of due process, the young person may also request trial in an adult court. However, if subsequently found guilty, the District or Supreme Court cannot sentence him/her as an adult unless the gravity of the offence or the youth's prior offending history warrants such a course of action.

In keeping with the Bill's greater emphasis on accountability rather than welfare concerns, the role of the Department for Family and Community Services within the Youth Court system has been reduced. Social workers currently play an important role at the point of sentencing in the Children's Court. This accords with the rehabilitative or welfare approach to the treatment of juvenile offending, which regards such behaviour as a sign of underlying social and personal problems requiring "treatment" rather than punishment. Since social workers have been considered to be experts in this area, they have been assigned the task of advising the Court as to appropriate options and providing treatment alternatives. This involvement of FACS staff, while in accordance with their obligations under the Act, has recently been the subject of considerable criticism.

With the current shift in emphasis away from traditional welfare notions towards the view that young people must be held more accountable for their actions, it is no longer appropriate for social workers to have such a pronounced input at the Court level. In line with this, the Young Offenders Bill does not confer on social workers an automatic right of audience and pre-sentence reports will be prepared by FACS only at the request of the Court. Moreover, the Bill specifically stipulates that these presentence reports must not contain any sentencing recommendations. FACS will, however, continue to provide programs for young offenders and be responsible for the administration of the State's detention centres.

Other important changes made by the Bill include requiring victims to be informed of the identity of the offender if they so request; extending the scope and membership of the current Children's Court Advisory Committee (renamed the Juvenile Justice Advisory Committee) to more effectively monitor the operation of the juvenile justice system as a whole; and extending the membership of the Training Centre Review Board to include police representatives.

In summary, it is clear that the *Young Offenders Bill* embodies a radical restructuring of the juvenile justice system in South Australia. The strong emphasis on accountability and community protection are in accord with the growing public concern that under the current system young offenders are being dealt with too leniently and are not being forced to accept responsibility for their actions. The introduction of a formal police cautioning system provides police with a more effective mechanism for responding to more trivial offending, while the establishment of family conferencing allows greater participation by the parents, the young offender and the victim in determining appropriate outcomes. Finally, by strengthening and extending the penalties available to the Youth Court, the Bill ensures that young offenders will receive appropriate levels of punishment.

From the time of first settlement, South Australia has been regarded a trend setter in the area of juvenile justice. This Bill will ensure that its reputation in this area is maintained.

PART 1

PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

This clause provides for commencement on proclamation.

Clause 3: Objects and statutory policies

This clause sets out the objects of the Act and the statutory policies that must be followed in the exercise of powers under the Act.

Clause 4: Interpretation

Attention is drawn to the definitions of "**youth**" and "**minor offence**". The definition of "**minor offence**" determines the types of offences that may be dealt with by caution or family conference.

Clause 5: Age of criminal responsibility

The age at which a person can commit an offence is retained at 10.

PART 2
MINOR OFFENCES
DIVISION 1—GENERAL POWERS

Clause 6: Informal cautions

A police officer may informally caution a youth who admits the commission of a minor offence. An informal caution is not recorded.

Clause 7: More formal proceedings

The other choices presented to a police officer where a youth admits the commission of a minor offence are to formally caution the youth, to initiate action for a family conference or, in the case of repeated offences or some other circumstance of aggravation, to lay a charge for the offence before the Youth Court.

The youth may require the matter to go to court.

DIVISION 2—SANCTIONS THAT MAY BE IMPOSED BY POLICE OFFICER

Clause 8: Powers of police officer

In administering a formal caution a police officer may require the youth to enter into an undertaking to pay compensation to the victim, to carry out community service (not exceeding 75 hours) or to apologise to the victim or do anything else that may be appropriate in the circumstances of the case.

If such an undertaking is breached, the matter may be taken to a family conference or a charge may be laid for the offence before the Youth Court. The youth may require the matter to go to court.

The police officer must, at the request of the victim, inform the victim of the identity of the offender and how the offence has been dealt with.

DIVISION 3—FAMILY CONFERENCE

Clause 9: Appointment of Youth Justice Co-ordinators

This clause governs the appointment of Youth Justice Co-ordinators for 3 year terms. The Senior Judge of the Youth Court must be consulted about such appointments.

Clause 10: Convening of family conference

A Youth Justice Co-ordinator must fix a time and place for the family conference and invite the guardians of the youth, relatives or other persons with a close association with the youth who may be able to participate usefully, the victim and, if the victim is a youth, the guardians of the victim, and any other persons he or she thinks fit. The victim may also invite a person to attend to provide the victim assistance and support.

Clause 11: Family conference, how constituted

A family conference consists of the Co-ordinator, the youth, the persons who attend in response to invitation and a representative of the Police Commissioner. The youth may be advised by a legal practitioner. The conference is to act by consensus of the youth and the invitees, but the youth and the police representative must concur in any decision.

If no decision can be reached the matter must be referred to the Youth Court.

Clause 12: Powers of family conference

The conference may decide to administer a formal caution to the youth, require the youth to undertake to pay compensation to the victim, to carry out community service (not exceeding 300 hours) or to apologise to the victim or do anything else that may be appropriate in the circumstances of the case. An undertaking cannot extend beyond 12 months.

If the youth does not attend the conference or comply with a requirement of the conference or breaches an undertaking, a charge for the offence may be laid before the Court.

The Co-ordinator must, at the request of the victim, inform the victim of the identity of the offender and how the offence has been dealt with.

Clause 13: Limitation on Publicity

Restrictions are placed on the publication of reports concerning action taken by police officers and family conferences against youths.

PART 3
ARREST AND CUSTODY OF SUSPECTED OFFENDERS

Clause 14: Application of general law

This clause applies the general law to youths with necessary modifications.

Clause 15: How youth is to be dealt with *if not granted bail*

If a youth is not granted bail, the youth is to be detained with a person, or in a place, approved by the Minister. The youth must not be detained in prison although if there is no other alternative in a country area the youth may be detained in a police prison or a police station approved by the Minister (but must be kept away from adults detained in that place).

PART 4
COURT PROCEEDINGS AGAINST A YOUTH
DIVISION 1—THE CHARGE

Clause 16: Charge to be laid before the Court

Youths must be charged before the Youth Court.

Clause 17: Proceedings on the charge

The charge is to be dealt with in the same way as the Magistrates Court deals with a charge of a summary offence.

The Court may refer the matter back for a formal caution or a family conference.

The charge may be dealt with by way of preliminary examination in the Youth Court and trial or sentencing in the Supreme or District Court if the offence is homicide or attempted homicide, the youth requires it to be so dealt with or the Youth Court or the Supreme Court determines that the youth should be dealt with as an adult because of the gravity of the offence or because of repeated offending.

DIVISION 2—PROCEDURE ON PRELIMINARY EXAMINATION AND TRIAL

Clause 18: Procedure on trial of offences

The procedure is as for a summary offence in the Magistrates Court.

Clause 19: Committal for trial

The procedure for preliminary examinations is as in the Magistrates Court.

Clause 20: Change of plea

A plea can be changed from guilty to not guilty by direction of the Court at any stage.

Clause 21: Recording of convictions

A conviction is to be recorded for a major indictable offence unless special reasons for not doing so are given by the Court.

DIVISION 3—SENTENCE

Clause 22: Power to sentence

The Youth Court has the same sentencing powers as the Magistrates Court in relation to summary offences and as the District Court in relation to indictable offences.

Clause 23: Limitation on power to impose custodial sentence

The Youth Court cannot sentence a youth to imprisonment. Instead the youth can be sentenced to detention in a training centre for a period not exceeding 3 years or home detention not exceeding 6 months or an aggregate of 6 months over one year or detention in a training centre for a period not exceeding 2 years to be followed by home detention for a period not exceeding 6 months or for periods not exceeding 6 months in aggregate over a period of one year or less.

Clause 24: Limitation on power to impose fine

The maximum fine that may be imposed by the Youth Court is a Division 7 fine ($2 000).

Clause 25: Limitation on power to require community service

The maximum community service that a youth may be required to carry out by the Youth Court is 500 hours.

Clause 26: Limitation on Court's power to require bond

The Youth Court may not require a youth to enter into a bond but may impose an obligation of a similar kind on the youth.

Clause 27: Court may require undertaking from guardians

The Youth Court may ask the guardians of a youth to guarantee the youth's compliance, to take specified action to assist the youth's development and to guard against further offending by the youth or to report at intervals on the youth's progress.

Clause 28: Power to disqualify from holding driver's licence

The Youth Court may disqualify a youth from holding a driver's licence in appropriate cases.

DIVISION 4—SENTENCING OF YOUTH BY SUPREME OR DISTRICT COURT

Clause 29: Sentencing youth as an adult

The options for sentencing when a youth is before the Supreme or District Court are for that court to deal with the youth as an adult (but only if the offence is an indictable offence and the gravity of the offence or the history of offending justifies it), to deal with the youth in any manner that the Youth Court could have dealt with the youth or to remand the youth to the Youth Court for sentencing.

Murder must be punished by imprisonment for life.

DIVISION 5—MISCELLANEOUS

Clause 30: Court to explain proceedings etc.

A court is required to satisfy itself that a child understands the nature of criminal proceedings being brought against the child.

Clause 31: Prohibition of joint charges

A youth can only be charged jointly with an adult if the matter is to go before the Supreme or District Court.

Clause 32: Reports

A court may, once it has found an offence proved against a youth, receive a report on the social background and personal circumstances of the youth from FACS. If the youth, a guardian of the youth or the prosecutor disputes the report, it must not be relied on unless proved beyond reasonable doubt.

Clause 33: Reports to be made available to parties

Generally, reports in criminal proceedings must be available to the youth, guardians of the youth and the prosecutor.

Clause 34: Attendance at court of guardian of youth charged with offence

A court may compel the attendance of a youth's guardians.

Clause 35: Counsellors, etc., may make submissions to court

A court may hear submissions from a counsellor or guardian of a youth.

PART 5

CUSTODIAL SENTENCES

DIVISION 1—YOUTH SENTENCED AS ADULT

Clause 36: Detention of youth sentenced as adult

The youth will be detained in a training centre unless the court orders that the youth go to prison. The court must decide whether once the youth attains 18 the youth should go to prison or stay in a training centre. Provisions of the *Correctional Services Act* 1982 relating to remission and release on parole apply to the youth with certain modifications.

DIVISION 2—YOUTHS CONVICTED OF MURDER

Clause 37: Release on licence of youths convicted of murder

The Supreme Court may authorise the release on licence by the *Training Centre Review Board* of a youth sentenced to imprisonment for life and being detained in a training centre.

The licence continues until the youth is discharged by the Supreme Court absolutely from the sentence of life imprisonment.

The Board may impose conditions on the release. If the conditions are breached, the licence may be cancelled and if the youth is sentenced to imprisonment or detention for an offence committed while subject to a licence that licence is cancelled.

An appeal lies to the Full Court against a decision of the Supreme Court to release a youth on licence or to discharge a youth from a sentence of life imprisonment.

DIVISION 3—RELEASE FROM DETENTION

Clause 38: *The Training Centre Review Board*

This clause establishes the Board comprised of—

1. the Judges of the Youth Court; and
2. two persons with appropriate skills and experience in working with young people, appointed by the Governor on the recommendation of the Attorney-General; and
3. two persons with appropriate skills and experience in working with young people, appointed by the Governor on the recommendation of the Minister; and
4. two police officers with appropriate qualifications and experience appointed by the Governor on the recommendation of the Minister for Emergency Services.

The Board is to be constituted of a Judge and 3 appointed members when sitting to review any matter under the Act.

Clause 39: *Review of detention by Training Centre Review Board*

The progress of a youth detained in a training centre must be reviewed at least each 6 months.

The Board must determine whether a youth approaching 18 will remain in the training centre or go to prison.

Clause 40: Leave of absence

The Director-General of FACS may grant a youth leave of absence from a training centre—

5. for the medical or psychiatric examination, assessment or treatment of the youth; or
6. for the attendance of the youth at an educational or training course; or
7. for such compassionate purpose as the Director-General thinks fit; or
8. for any purpose related to criminal investigation; or
9. for the purpose of enabling the youth to perform community service.

If the youth is to leave the State, leave of absence can only be granted with the Minister's approval.

Clause 41: Conditional release from detention

The Board may authorise the Director-General to grant leave to a youth where the youth will not be subject to the supervision of the Director-General.

The Board may order the release of a youth if the youth has generally been of good behaviour, has served two thirds of his or her sentence and there is no undue risk that the youth would, if released, re-offend. The release may be conditional.

Clause 42: Absolute release from detention by Court

Where a youth detained by the order of the Youth Court has been released under clause 38, the Youth Court may discharge the youth absolutely from the detention order.

DIVISION 4—TRANSFER OF YOUTHS UNDER DETENTION

Clause 43: Interpretation

This interpretation clause operates for the purposes of this division.

Clause 44: Transfer of young offenders to other States

This clause enables the Minister to make arrangements with his or her interstate counterparts for the transfer of young offenders from this State to another State or Territory. If the offender does not consent to the transfer there must be special reasons justifying the transfer without consent. An arrangement for transfer must be ratified by the Youth Court.

Clause 45: Transfer of young offenders to this State

This clause enables the Minister to make arrangements with his or her interstate counterparts for the transfer of young offenders to this State.

Clause 46: Adaptation of correctional orders to different correctional systems

Correctional orders may be modified as necessary.

Clause 47: Custody during escort

An escort is given the custody of the young offender during transfer.

DIVISION 5—ESCAPE FROM CUSTODY

Clause 48: Escape from custody

This clause makes it an offence for a youth to escape from a training centre or from any person who has his or her lawful custody or to otherwise be unlawfully at large. Any detention to which the youth is sentenced for such an offence is in addition to any other sentence to which the youth is already subject.

PART 6

COMMUNITY SERVICE

Clause 49: Community service cannot *be imposed unless there is a placement for the youth*

A court or family conference must be satisfied that there will be a suitable placement for the youth in a community service program within a reasonable time before requiring a youth to carry out community service.

Clause 50: Insurance cover for youths performing community service

A youth performing community service must be insured.

Clause 51: Community service may only involve certain kinds of work

Community service must be for the benefit of—

10. the victim of the offence; or

11. persons who are disadvantaged through age, illness, incapacity or any other adversity; or

12. an organisation that does not seek to secure a pecuniary profit for its members; or

13. a Public Service administrative unit, an agency or instrumentality of the Crown or a local government authority.

PART 7

COMPENSATORY ORDERS AGAINST PARENTS

Clause 52: Compensatory orders against parents

The Youth Court may order a parent of a young offender to pay compensation to the victim of the offence unless the parent proves that he or she generally exercised, so far as reasonably practicable in the circumstances, an appropriate level of supervision and control over the youth's activities. The Court must have regard to the likely effect of the order on the family to which the youth and parent belong.

PART 8

THE JUVENILE JUSTICE ADVISORY COMMITTEE

Clause 53: Establishment of the Juvenile Justice Advisory Committee

The *Juvenile Justice Advisory Committee* is established and comprises—

14. a person with recognised expertise in the field of juvenile justice (the presiding member); and

15. a Judge of the Supreme Court or a District Court Judge; and

16. a person who, in the opinion of the Attorney-General, has wide knowledge of and experience in law enforcement, and who is nominated by the Attorney-General; and

17. a person who, in the opinion of the Minister, has wide knowledge of and experience in the field of community welfare, and who is nominated by the Minister; and

18. a person who is, in the opinion of the Minister, a suitable representative of the public;

19. an Aboriginal person who is a suitable representative of the Aboriginal community.

Clause 54: Allowances and expenses

Allowances and expenses are to be determined by the Governor.

Clause 55: *Removal from and vacancies of office*

This clause provides for removal from office by the Governor and for vacancies of office.

Clause 56: Functions of the Advisory Committee

The functions of the Committee are to—

20. monitor and evaluate the administration and operation of the Act; and

21. cause such data and statistics in relation to the administration of juvenile justice as it thinks fit, or as the Attorney-General may direct, to be collected; and

22. perform any other functions assigned by the Act; and

23. advise the Minister on other issues relevant to the administration of juvenile justice; and

24. perform such other functions as may be assigned, by regulation, to the Advisory Committee.

Clause 57: Reports

The Advisory Committee must make an annual report to the Attorney-General and must make other reports as requested by the Attorney-General.

PART 9

MISCELLANEOUS

Clause 58: Determination of a person's age

An estimate of age may be used for the purposes of the Act if there is no evidence or information as to age.

Clause 59: Prior offences

Offences committed as a youth are to be disregarded when considering offences as an adult. Offences as a youth may be considered when considering other offences as a youth.

Clause 60: Detention and search by officers of Department

Custody of a youth being conveyed to court is given to an authorised officer of FACS.

Clause 61: Hindering an officer of the Department

It is an offence to hinder an officer of FACS.

Clause 62: Issue of warrant

Allegations must be substantiated on oath before a warrant for arrest or order for removal of a youth is issued.

Clause 63: Detention of youths in emergencies

Police prisons or police stations approved by the Minister may be used where an emergency prevents detention of youths in training centres.

Clause 64: Transfer of youths in detention to other training centre or prison

Provision is made for transfer of youths between training centres and for youths who have attained 18 to apply to a Judge of the Youth Court to be transferred to prison.

Provision is also made for the Director-General to apply for transfer of a youth 16 or over to prison if the youth cannot be properly controlled in a training centre, has been found guilty of assaulting an employee or other person in a training centre, has persistently incited others to cause disturbance or has escaped or attempted to escape.

Clause 65: *Name and address of youth to be given in certain circumstances*

The Commissioner of Police is required to inform victims of the name and address of the offender at their request.

Clause 66: *Regulations*

Regulations may—

25. regulate the administration and management of training centres; and

26. regulate the practice and procedure of the *Training Centre Review Board;* and

27. prescribe forms to be used under this Act; and

28. prescribe the procedures to be observed in relation to the detention of a youth prior to being dealt with by a court, or while a youth is being conveyed to or from any court, or while a youth is in attendance at any court; and

29. prescribing fines, not exceeding a division 8 fine in each case, for breach of the regulations.

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

YOUTH COURT BILL

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

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

That this Bill be now read a second time.

As this Bill has been dealt with in another place, I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The *Youth Court Bill,* together with the *Young Offenders Bill* and the proposed *Children's Protection Bill,* will replace the *Children's Protection and Young Offenders Act 1979.*

The need for a separate *Youth Court Bill* stems from the fact that, whereas the *Children's Protection and Young Offenders Act* establishes the Children's Court and confers civil and criminal jurisdiction, provisions for the treatment of offending children and children in need of care and protection have now been legislatively separated into the *Young Offenders Bill* and the proposed *Children's Protection Bill.* It is therefore sensible to have a separate Act constituting the Youth Court.

The *Youth Court Bill* establishes the Youth Court of South Australia and defines its jurisdiction and powers. Under Clause 7 of the Bill, the Court has jurisdiction to hear and determine proceedings under the *Children's Protection Act 1993* and has the civil and criminal jurisdiction conferred by the *Young Offenders Act* 1993. In addition, it has powers under the *Bail Act* and any other civil or criminal jurisdiction conferred by statute.

Most of the Bill is concerned with administrative procedures. It defines the Court's judiciary, specifies its administrative and ancillary staff, details the constitution of the Court, specifies the time and place of sittings and confers on the Court the power to adjourn matters. It establishes the evidentiary powers of the Youth Court, identifies appropriate appeal procedures, and legislates for the confidentiality of proceedings.

The present judicial structure of the Children's Court has been retained. This consists of a Senior Judge — a District Court Judge designated by proclamation as the Senior Judge of the Youth Court — together with other designated Judges, Magistrates, justices and special justices. The Bill does, however, make one important change — it limits the length of appointment of a Judge or Magistrate to the Youth Court to a term not exceeding five years.

In recognition that greater attention must be paid to the rights of victims, clause 22(e)(i) specifies that in criminal matters, the alleged victim of an offence, together with a support person nominated by that victim, has the right to be present in court.

Another significant change is the abolition of the reconsideration process. Under s. 80 of the *Children's Protection and Young Offenders Act,* a Judge of the Children's Court may, on application from the child or the Minister, reconsider any sentence imposed by a magistrate, special justice or justice of the peace. Upon such reconsideration, the Judge may confirm the original order or discharge it and substitute any other order considered appropriate. Evidence placed before the Select Committee indicated some dissatisfaction with this process from both the police and magistrates, and as a result, the Committee recommended that reconsiderations be abolished. In line with this, the *Youth Court Bill* provides for an appeal system only. Under clause 22 of the Bill, an appeal against any judgement given in proceedings involving indictable offences lies to a Full Court, while an appeal against a magistrate, two justices or a special justice will be heard either by the Senior Judge of the Youth Court or the Supreme Court constituted of a single Judge.

While the Youth Court will continue to hear both civil and criminal matters, clause 17 stipulates that these proceedings must be segregated wherever possible.

PART 1
PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

This clause provides for commencement on proclamation.

Clause 3: Interpretation

This is an interpretation provision.

PART 2
YOUTH COURT OF SOUTH AUSTRALIA
DIVISION I— ESTABLISHMENT OF COURT

Clause 4: Establishment of Court

The *Youth Court of South Australia* is established.

Clause 5: Court of record

It is a court of record.

Clause 6: Seals

This clause deals with the sealing of documents by the Court.

DIVISION 2— JURISDICTION OF THE COURT

Clause 7: Jurisdiction

The Courts jurisdiction is derived from the *Children's Protection Act 1993,* the *Young Offenders Act 1993,* the *Bail Act 1985* and any other statute that expressly confers jurisdiction on the Court. The Court also has power to make summary protection orders under the *Summary Procedure Act* 1926.

DIVISION 3— COURT'S DUTY TO EXPLAIN PROCEEDINGS

Clause 8: Duty to explain proceedings

The Court must explain the nature and purpose of proceedings to parties.

PART 3

COMPOSITION AND ADMINISTRATION OF THE COURT

DIVISION 1— THE COURT'S JUDICIARY

Clause 9: The Court's judiciary

The Court is comprised of a Senior Judge, Judges, Magistrates and justices and special justices. The Senior Judge and Judges come from the District Court.

Clause 10: The Senior Judge

The Senior Judge is given responsibility for the administration of the Court.

DIVISION 2— THE COURT'S ADMINISTRATIVE AND ANCILLARY STAFF

Clause 11: Administrative and ancillary staff

The Registrar and other persons appointed to the non-judicial staff comprise the Court's administrative staff.

Clause 12: The Registrar

The Registrar is the principal officer and appointment of the Registrar is only with the concurrence of the Senior Judge.

Clause 13: Responsibilities of staff

The administrative staff are responsible to the Senior Judge.

DIVISION 3— SITTING AND DISTRIBUTION OF BUSINESS

Clause 14: The Court, how constituted

The Court is to be constituted of a Judge in relation to major indictable offences. Otherwise the Court may be constituted of a Judge or Magistrate or, if none are available, of 2 justices or a special justice.

A Magistrate may not impose a sentence of detention of more than 2 years. Justices may not impose a sentence of detention and cannot hear an application for an order for the protection or care of a child. A Magistrate or justice may adjourn the question of sentence for hearing and determination by a Judge.

Clause 15: Time and place of sittings

The Senior Judge is to direct the time and place of sittings.

Clause 16: Adjournment from time to time and place to place

The Court is given power to adjourn proceedings.

Clause 17: Segregation of proceedings

As far as practicable civil and criminal proceedings are to be segregated.

PART 4

EVIDENTIARY POWERS

Clause 18: Power to require attendance of witnesses and production of evidentiary material

The Court is given power to issue summonses to appear or to produce material.

Clause 19: Power to compel the giving of evidence

This clause sets out the circumstances in which contempt of court will be committed.

Clause 20: Entry and inspection of property

The Court is given power to enter any land or building to carry out inspections relevant to proceedings.

Clause 21: Production of persons held in custody

The Court is given power to issue summonses or warrants for the appearance before it of persons held in custody.

PART 5

APPELLATE PROCEEDINGS

Clause 22: Appeals

Appeals lie against all judgments other than a judgment in a preliminary examination.

Appeals relating to indictable offences go to the Full Court of the Supreme Court. Appeals against a judgment of a Magistrate,

2 justices or a special justice go to the Senior Judge or to a Judge of the Supreme Court. Appeals against a judgment of a Judge that relate to summary offences or other matters go to a Judge of the Supreme Court unless referred to the Full Court.

Clause 23: Reservation of question of law

The Court may reserve any question of law for the Supreme Court.

PART 6

CONFIDENTIALITY OF PROCEEDINGS

Clause 24: Persons who may be present in Court

Restrictions are placed on who may be present at a hearing by the Court.

Clause 25: Restriction on reports of proceedings

The Court may prohibit publication of any report of proceedings relating to a child. Even if a report may be published it must not identify the child or include information tending to identify the child.

PART 7

MISCELLANEOUS

Clause 26: Immunities

Protection from civil liability is given to Judges, Magistrates and other persons exercising the jurisdiction of the Court.

Clause 27: Contempt in the face of the Court

This clause sets out the circumstances under which contempt of Court is committed.

Clause 28: Punishment of contempt

This clause sets out the penalties for contempt.

Clause 29: Authority for imprisonment or detention

This clause sets out the procedure for imprisoning or detaining a child pursuant to a Court order.

Clause 30: Age

The Court may make an estimate of age where there is no satisfactory evidence.

Clause 31: Legal process

This clause provides for validity of legal process.

Clause 32: Rules of Court

Rules may be made—

30. regulating the business of the Court and the duties of the various officers of the Court;

31. regulating the custody and use of the Court's seals;

32. regulating the practice and procedure of the Court;

33. regulating the form in which evidence is taken or received by the Court;

34. regulating costs;

35. dealing with any other matter necessary or expedient for the effective and efficient operation of the Court.

Clause 33: Court fees

Regulations may fix fees in relation to Court proceedings.

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

EDUCATION (TRUANCY) AMENDMENT BILL

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

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The *Education (Truancy) Amendment Bill* amends the *Education Act 1972.*

The two main changes effected by this Bill are the removal of truancy as an offence for children and the extension of the powers available to authorised officers to remove truanting children from public places and return them either to the school or to their parents or guardians. Both of these amendments are in accord with the recommendations of the Select Committee on the Juvenile Justice System.

Under the current *Education Act,* a child who is frequently absent from school for no valid reason can be charged with the offence of truancy. The child will then be dealt with in the first instance by a Children's Aid Panel and if this fails, will be referred to the Children's Court for a hearing. The Select Committee rejected this approach. It recommended that, if all reasonable action has been taken to ensure attendance, the young person should be considered as a child in need of care and protection rather than being dealt with as an offender. The Bill gives effect to this recommendation. It does not, however, remove the responsibility of parents to ensure their child's attendance at school. Parents are therefore still liable for prosecution under the Education Act.

To ensure that care and protection proceedings are initiated for truanting children only as a last resort, the Bill places an obligation on authorised officers to take all possible steps to resolve the problem at the school level. It also extends the powers of these authorised officers when dealing with a truanting child found in a public place during school hours. Under the current Act, an authorised officer who observes such a child can do no more than seek to obtain from that child or an accompanying adult the child's name, address, age and reason for his/her non-attendance at school. Under the new Bill, if the child does not have a valid reason for being absent from school, the authorised officer will have the authority to take that child into his or her custody and to return the child either to the school or to the child's parents or guardians. This will ensure that the child experiences an immediate consequence for his/her truanting behaviour. It may also reduce the likelihood of that child becoming involved in any illegal behaviour while unsupervised in a public place.

Clause 1: Short title

Clause 2: Commencement

This clause provides for commencement on proclamation.

Clause 3: Substitution of s. 79

Section 79 currently creates an offence of truancy to be dealt with under the *Children's Protection and Young Offenders Act 1979.*

That offence is removed and the new section 79 requires authorized officers (teachers, police, authorized FACS officers and authorized Education Department officers) to take all practicable action to ensure children attend school.

Clause 4: Amendment of s. 80—Powers in relation to suspected truancy

The amendment gives all teachers the powers currently given to the police, authorised FACS officers and authorised Education Department officers to obtain information about the identity of a child who is not at school and the reasons for the child's non-attendance.

The amendment extends the powers of such persons by enabling them to take a child into custody and return the child to school.

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

DRIED FRUITS BILL

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

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

South Australia normally produces only about 10 per cent of Australia's dried vine fruit (dvf), but in excess of 50 per cent of Australia's dried tree fruit (dtf). In the 1991 season, the last season for which complete figures are available, South Australia produced 9 260 tonnes of dvf out of the 92 130 tonnes national production. In relation to dtf, South Australia produced 2794 tonnes out of a national total of 5 162 tonnes. Of the South Australian tonnage of dtf the majority are dried apricots whereas the majority of the balance are prunes produced in New South Wales.

The development of the *Dried Fruits Acts* was brought about as a result of the policies of Governments in the Southern States (Victoria, South Australia and New South Wales), supported by the Commonwealth Government, to settle large numbers of repatriated World War 1 soldiers in the River Murray areas of these States. Prior to government involvement with soldier settlement in these areas, there had already been steady growth in settlement. The government activity in this area led to a rapid increase in production which in turn led to the request from the industry for legislation to be developed to secure organisation of the marketing of the fruit.

The Victorian and South Australian Dried Fruits Boards were formed in 1925 and the New South Wales Dried Fruits Board was formed in 1927. To enhance the role of the Boards, the Commonwealth in 1928 passed legislation that allowed the State boards to act on the Commonwealth's behalf and grant licences to packers.

To ensure that the dried fruits industry was best equipped to take advantage of the opportunities that exist in producing quality products, and as part of the South Australian Government's commitment to regulatory review, a review of the *Dried Fruits Act 1934-72* was instigated.

The review has been supported by the majority of those involved with the dried fruits industry and all significant industry organisations representing dried fruits growers and packers have contributed comments to the review.

The *Dried Fruits Bill* 1993 has been prepared following the receipt of industry and community responses to the Dried Fruits Marketing Green Paper released in January /February 1991 and the Review of Dried Fruits Marketing White Paper, released in July 1992.

From these papers, it has been concluded that some of the current functions and powers of the Dried Fruits Board (DFB) are outdated and should be phased out or not included in the new legislation.

It is proposed that the functions, powers, structure and method of nominating the Dried Fruits Board of South Australia be changed (through replacement of the current Act), to provide more focus on market development, generic promotion, collection and dissemination of marketing information.

Overall objects of the legislation are to:

- Establish a statutory corporation to oversee and assist the dried fruits industry; and
- Register producers and packers and require certain standards to be met for registration; and
- Require certain standards to be met in the production, packing, storage and handling of dried fruits.

Recommendations made in the White Paper which have been incorporated in the drafting of the Bill encompass the following changes from the current *Dried Fruits Act 1934-1972*.

- The following powers have been removed:
  - to make and carry out contracts with any person in respect to the purchase or sale of dried fruits in Australia;
  - to fix the remuneration paid to repackers (including the category 'dealers' which is to be removed from the new legislation) for the sale or distribution of dried fruits.
- The new Board will not be able to use the licensing provisions to unfairly restrict entry and competition in the packaging and processing sector of the South Australian dried fruits industry. Processors and packers would be registered if minimum standards are met.
- The DFB operations will retain emphasis on the following areas:
  - registration of packing sheds and stores;
  - setting and monitoring standards for equipment, facilities, etc.;
  - setting grade standards;
  - inspection of properties and drying grounds;
  - registration of growers and packers;
  - collection and dissemination of market information;
  - promotion of dried fruits;
  - assistance to research and development into dried fruit production, handling and packing procedures;
  - collection of levies and other revenue.
- The DFB retains the power to make and carry out contracts or arrangements with boards appointed under legislation in force in other States with objects similar to those of this Act for concerted action in the marketing of dried fruits produced in Australia, or in taking or defending legal proceedings, and for purposes incidental thereto.
- A five member Selection Committee will be formed for the purpose of selecting four members of the DFB. The Minister of Primary Industries will nominate the chairperson of the Committee.

Members of the Selection Committee will represent the various organisations and sectors which make up the dried fruits industry. The Selection Committee will be appointed by the Minister of Primary Industries following consultation with the industry.

- A new five member Board be appointed consisting of the following:
  - a chairperson selected by the Minister of Agriculture;
  - two members selected primarily on the basis of skills and experience in the dried fruits production sector of the industry;
  - two members, one selected primarily on the basis of skills and experience in the packing sector of the industry and one selected primarily on the basis of skills and experience in the marketing sector of the food industry.

PART 1
PRELIMINARY

Clause 1: Short title

Clause 2: Commencement

The Bill provides for commencement on proclamation.

Clause 3: Object

The object of the Bill is to assist the dried fruits industry, in particular—

1. by establishing a statutory corporation to oversee and assist the dried fruits industry; and
2. by registering producers and packers and requiring certain standards to be met for registration; and
3. by requiring certain standards to be met in the production, packing, storage and handling of dried fruits.

Clause 4: Interpretation

"Dried fruits" includes both dried vine fruits and dried tree fruits.

A **"producer"** is a person who dries fruits for sale.

A **"packer"** is a person who processes or packs dried fruits for sale.

PART 2
DRIED FRUITS BOARD (SOUTH AUSTRALIA)
DIVISION 1—THE BOARD

Clause 5: Dried Fruits Board (South Australia)

The *Dried Fruits Board* continues in existence under the name *Dried Fruits Board (South Australia)* and is a body corporate.

Clause 6: Composition of Board

The Board is comprised of 5 members appointed by the Governor as follows:

1. one (the presiding member) will be nominated by the Minister; and
2. one will be a person, nominated by the selection committee, who has, in the opinion of the committee, extensive knowledge of and experience in the production of dried tree fruits; and
3. one will be a person, nominated by the selection committee, who has, in the opinion of the committee, extensive knowledge of and experience in the production of dried vine fruits; and
4. one will be a person, nominated by the selection committee, who has, in the opinion of the committee, extensive knowledge of and experience in the grading and packing of dried fruits; and
5. one will be a person, nominated by the selection committee, who has, in the opinion of the committee, extensive knowledge of and experience in the marketing of dried fruits or any other foods.

Clause 7: Selection committee

The Minister is to appoint a 5 member selection committee after seeking nominations from such organisations as are, in the opinion of the Minister, substantially involved in the dried fruits industry.

Clause 8: Conflict of interest over appointments

A member of the selection committee cannot be a member of the Board and cannot deliberate on a nomination if the person under consideration is closely associated with the member.

Clause 9: Conditions of membership of Board

Members of the Board are appointed for up to 3 year terms and may be reappointed.

Clause 10: Remuneration

The Minister determines the remuneration of members of the Board. Payments are to be from the funds of the Board.

Clause 11: Vacancies or defects in appointment of members

Vacancies or defects in appointments of members do not result in invalidity of the acts of the Board.

Clause 12: Procedures of Board

A quorum is 3 members. The presiding member has a casting vote. Meetings may be conducted by telephone or video conference. In other respects the Board may determine its own procedures.

Clause 13: Disclosure of interest of member

Potential conflicts of interest must be brought to the attention of the Board. The Board's permission is required for participation of a member in deliberations once a disclosure has been made.

Clause 14: Member's duties of honesty, care and diligence

Members are required to act honestly and with a reasonable degree of care and diligence. Members must not make improper use of information or of their official position.

Clause 15: Common seal and execution of documents

The method for affixing the common seal of the Board to a document and of executing documents is set out.

DIVISION 2—OPERATIONS OF BOARD

Clause 16: Functions of Board

The Board is required to co-operate with industry, industry bodies and the Board's interstate counterparts.

The functions of the Board are-

1. to encourage, assist and oversee the maintenance and continued development of the dried fruits industry in this State;

2. to plan and carry out programs of inspection of premises, facilities and equipment used in the production, packing, storage or handling of dried fruits;

3. to collect and collate information relevant to the dried fruits industry, and to disseminate that information to persons involved in the industry and other interested persons, with a view to enhancing the competitiveness of the industry;

4. to work with and provide advice to persons involved in the dried fruits industry with a view to improving the quality of dried fruits, the methods of producing, packing, storing and handling dried fruits and the marketing of dried fruits;

5. to undertake or facilitate research related to the dried fruits industry and in particular research into the quality of dried fruits, the methods of producing, packing, storing and handling dried fruits and the marketing of dried fruits;

6. to promote, or facilitate the promotion of, the consumption of dried fruits produced in this State;

7. to keep registers of all persons registered under this Act;

8. to keep this Act under review and make recommendations to the Minister with respect to the Act and regulations made under the Act;

9. to carry out any other functions assigned to the Board by the Minister that are consistent with the objects of this Act.

Clause 17: Five year strategic and operational plan of Board's activities

The Board is required to develop rolling 5 year plans of its proposed activities and to present the plans to public meetings.

Clause 18: Powers of Board

The Board is given powers necessary or incidental to the performance of its functions.

Clause 19: Delegation

The Board may delegate its functions or powers.

Clause 20: Accounts and audit

The Board is required to keep proper accounts and to have them audited.

Clause 21: Annual report

The Board is required to make an annual report to the Minister who must table it in both Houses.

PART 3

DRIED FRUITS INDUSTRY

DIVISION 1—REGISTRATION

Clause 22: Obligation to be registered as producer

A producer is required to be registered although it is a defence that neither the producer or a business associate produced dried fruits for sale before the current financial year.

Clause 23: Obligation to be registered as packer

A packer is required to be registered.

Clause 24: Application for registration

The manner and form of application is regulated.

Clause 25: Grant of registration

The Board is required to register a person if satisfied—

1. in the case of an application for registration as a packer, that the applicant has sufficient business knowledge, experience and financial resources to properly carry on the business of processing or packing dried fruits; and

2. that the applicant fulfils the appropriate requirements set out in the regulations; and

3. that the premises at which the applicant's business will be carried on, and the facilities and equipment at the premises, comply with the appropriate requirements set out in the regulations; and

4. that the applicant has made satisfactory arrangements to ensure compliance with any continuing obligations under the Act.

Clause 26: Conditions of registration

Conditions may be imposed by regulation or by the Board. In addition registration is subject to the condition that alternative premises will not be used without the approval of the Board. The Board is required to give approval if the premises satisfy the requirements set out in the regulations.

Clause 27: Duration and renewal of registration

Registration is for each financial year and the Board must renew registration on due application.

Clause 28: Notification of ceasing business

A producer or packer is required to notify the Board on ceasing business or on ceasing business at particular premises.

Clause 29: Cancellation or suspension of registration

The Board may, with 2 weeks notice, cancel or suspend registration for contravention of the Act or failure to pay contributions or fees.

Clause 30: Appeal against decisions of the Board

An appeal to the District Court is provided against decisions of the Board relating to registration.

DIVISION 2—OTHER OBLIGATIONS OF REGISTERED PERSONS

Clause 31: Contributions

The Board may require registered persons to pay contributions to the Board towards its costs.

Clause 32: Returns

The Board may require registered producers or packers to furnish returns.

DIVISION 3—INSPECTION

Clause 33: Appointment of inspectors

The Board may appoint inspectors. In addition police officers are inspectors for the purposes of the Act.

Clause 34: Powers of inspectors

Inspectors are given powers relating to the enforcement and administration of the Act including power to require an owner or person in charge of dried fruits to detain and store the dried

fruits. An inspector may only enter residential premises with the permission of the occupier or pursuant to a warrant.

PART 4
MISCELLANEOUS

Clause 35: Immunity of members and inspectors

Members of the Board and inspectors are given immunity against civil liability for actions not extending to culpable negligence.

Clause 36: Notice

A notice under the Act may be sent by post.

Clause 37: False or misleading statements

It is an offence to provide false information under the Act.

Clause 38: General defence

It is a defence to prove that an offence did not result from failure to take reasonable care to avoid the commission of the offence.

Clause 39: Proceedings for offences

Prosecutions may be taken by a person authorised by the Board at any time within 12 months of the alleged offence.

Clause 40: Evidence

Evidentiary aids are provided.

Clause 41: Regulations

The regulation making power expressly covers various matters relating to dried fruits and registered persons and allows for exemptions. Fees imposed by the regulations may be differential.

SCHEDULE

Repeal and Transitional Provisions

Clause 1: Repeal of Dried Fruits Act 1934

Clause 2: Transitional provisions

The transitional provisions relate to the continuation of the Board, the continued registration of producers, the continued registration of persons in whose name packing houses are registered and the continuation of the obligation to pay contributions under the repealed Act.

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

EMPLOYMENT AGENTS REGISTRATION BILL

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

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The aim of this Bill is to set basic licensing and recording requirements for employment agents to safeguard the interests of both agents and users of agencies. In doing so it will facilitate the effective functioning of the employment agency industry.

The previous legislation, which this Bill replaces, was dated and contained many anachronisms which hindered its effective operation. Both agents and clients have called for continued regulation of the industry, thus necessitating an update of the legislation. To do this the Employee Registry Offices Act, 1915-1973 needs to be repealed and a new Act, Employment Agents Registration Act, 1993 established.

The changing industrial environment has meant that many different work arrangements have proliferated. The legislation does not seek to encroach on this development, but does set standards of conduct to ensure those seeking employment through agents are fully informed of their rights and obligations and can rely on their interests being served. The increased trend toward casual work and award deficit work has made a degree of regulation in this industry even more relevant. In specifically addressing the major aspects of the proposed legislation, the new requirements to be placed on the industry need to be separated from the functions which have been in place since the legislation was first established and will continue to be required.

The first change is that the scope of the Act has been increased to cover all employment agents in South Australia who find work for people for a fee. Previously, the Act only covered agents in the metropolitan area and only those who found work for 'employees', leaving many who did not fit this definition without an agency standard. Thus, 'freelance' personnel and contractors are now within the scope of the Act, with the exception of contracts which involve companies (as opposed to individuals) and contracts where the supply of labour is only incidental to the work, for instance the supply of equipment. Charitable organisations are also not subject to this Act.

Another change is a tightening of the issuance of licences. Previously the procedure required only a nominal payment and the signature of six ratepayers and a justice of the peace. The representative agency body has requested the criteria be strengthened to require two character references and prospective agents to publicise their intent to commence business, with time for objections to be raised. The licence fee will be increased to $100 to reflect cost recovery considerations and in the future will be determined by the regulations.

An extra requirement on agencies will be to issue a standard schedule of information to each worker, the details of which will be determined by regulation. The required information will include rates of pay, the award covering the worker (if relevant), their responsibility for tax and insurance payments, who the employer is (if applicable), expense reimbursement details and leave arrangements. Such information is necessary as many in the 'care' industry in particular have found the work arrangements to be complex due to the number of parties involved. Further changes include prohibiting agents charging fees to their own employees and to workers for just being listed. Client companies cannot be charged without notice.

The new legislation also incorporates many of the requirements of the previous Act, namely that the office premises must be registered, the licence and fee schedules must be displayed in the office, and the agent must be a 'fit and proper' person with knowledge of the appropriate industry.

The intended legislation does not impose any additional costs on the employment agency industry, other than the increased yearly licence fee, which previously did not recover costs. Penalties have been increased to be consistent with the Acts Interpretation Act. This of course will only have an impact on unscrupulous agents who breach the Act. The administration of the legislation, with these more realistic fees and penalties, will also become cost effective.

Generally this Bill sets minimum standards on employment agencies appropriate to current licensing and industrial requirements, without impinging on sound business practice. It fosters the credibility and security of employment agencies and acts as a preventive mechanism for misunderstandings and exploitation. The legislation can be viewed as a compromise between self regulation and statutory compliance needed for the

protection of workers using agencies, who are often not covered by awards or the Industrial Relation Act. Accordingly, the Bill is commended to Parliament.

The provisions of the Bill are as follows:

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for the commencement of the measure.

Clause 3: *Interpretation*

This clause sets out various definitions required for the purposes of the Bill. An "employment agent" is a person who, for monetary or other consideration, carries on the business of procuring workers for persons who desire to employ or engage others in work, or procuring employment for persons who desire to work. However, the definition will not extend to charitable or benevolent organisations which work on a non-profit basis, or to other organisations or associations excluded by the regulations. The concept of employment will encompass work by a "worker" under a contract of service, and other forms of remunerated work, subject to various exceptions set out in the definition of "employment contract". A "worker" will, by definition, be a natural person who performs work under a contract of employment.

Clause 4: Exemptions

The Minister will be empowered to confer exemptions from specified provisions of the Act on specified persons, or persons of a specified class, or in relation to specified premises, or premises of a specified class. An exemption may be granted on conditions determined by the Minister.

Clause 5: Non-derogation

The provisions of the Act are to be in addition to the provisions of any other Act and will not derogate from any civil remedy at law or in equity.

Clause 6: Requirement to be licensed

This clause will require a person who carries on business as an employment agent (or holds himself or herself out as an employment agent) to be licensed.

Clause 7: Application for a licence

This clause sets out the procedures to be followed in relation to an application for a licence. A person who applies for a licence will be required to cause the application to be advertised in the prescribed manner. Persons will be able to lodge written objections against licence applications. The Director will be required to grant a licence if the specified criteria are satisfied.

Clause 8: Term of licence

The term of a licence will be a period, not exceeding two years, stated in the licence.

Clause 9: Application for renewal of a licence

This clause sets out the procedures to be followed in relation to an application to renew a licence.

Clause 10: Licence conditions

A licence will be subject to prescribed conditions, and conditions imposed by the Director

Clause 11: Appointment of a manager

The business conducted in pursuance of a licence must be managed under the personal supervision of an appointed manager if the holder of the licence is not directly involved in the management of the business, or is a body corporate.

Clause 12: Transfer and surrender of licences

This clause provides for the transfer of licences.

Clause 13: Cancellation of licences

The Director will be empowered to cancel a licence in specified circumstances. However, the Director will be required to notify the holder of the licence of a proposed cancellation and to allow the holder to make submissions in relation to the matter before taking any action.

Clause 14: Person not entitled to fees, etc., if acts as agent in contravention of Division

This clause provides that a person who acts as an employment agent in contravention of a provision of the Division is not entitled to recover a fee for so acting.

Clause 15: Appeal against a decision

A right of appeal will lie under this clause to the Magistrates Court against a decision of the Director on a licensing matter.

Clause 16: Registered premises

The holder of a licence will be required to register any premises used for the purposes of his or her business as an employment agent.

Clause 17: Notice to be displayed

This clause requires that a person carrying on business as an employment agent will be required to display a notice clearly showing the name of the agent (or a registered business name), and the name of any manager of the business.

Clause 18: Death of licensee

This clause provides for the continuation of a licence in the event of the death of the licensee.

Clause 19: Display of information at registered premises

An employment agent will be required to clearly display at any business premises his or her scale of fees.

Clause 20: Responsibilities to workers

This clause regulates various matters relating to persons who have engaged an employment agent to find them employment. In particular, an employment agent will not be permitted to demand a fee by virtue only of the fact that a person is seeking employment through the agency. No fee will be payable if the employment agent becomes the employer. If employment is procured for a person, the employment agent will be required to provide the worker with a statement in the prescribed form which sets out relevant information as to the employment arrangements.

Clause 21: Responsibilities to employers

This clause regulates various matters relating to persons who have engaged an employment agent to find workers for them to employ or engage. A fee will not be payable in certain cases. A fee must not exceed the scale of fees displayed at the agent's registered premises.

Clause 22: Records, etc., to be kept

An employment agent will be required to keep various records under this clause, including the name of each client, details of deposits and fees paid to the agent, and details of employment contracts arranged by or through the agent.

Clause 23: Inspections

This clause sets out the powers of inspectors under the Act.

Clause 24: Prohibition against assisting a person falsely to pretend to be an employment agent, etc.

It will be an offence to supply or lend a document, or to assist a person, for the purpose of allowing a person falsely to pretend to be an employment agent.

Clause 25: Liability of agents for acts or omissions of employees, etc.

This clause provides that an act or omission of a person employed by an employment agent will be taken to be an act or omission of the agent unless the agent proves that the person was acting outside the course of employment.

Clause 26: False or misleading information

It will be an offence to provide any information under the Act which is false or misleading in a material particular.

Clause 27: Offences by bodies corporate

This clause relates to the responsibility of each member of the governing body of a body corporate to ensure that the body corporate does not commit an offence against the Act.

Clause 28: Commencement of prosecutions

Proceedings for offences against the Act will need to be commenced within three years after the date on which the offence is alleged to have been committed.

Clause 29: Delegation by Director

This clause allows the Director to delegate his or her powers or functions under the Act to any other person engaged in the administration of the Act.

Clause 30: Regulations

This clause sets out the regulation-making powers of the Governor for the purposes of the Act.

Clause 31: Repeal and transitional provisions

This clause provides for the repeal of the *Employers Registry Offices Act 1915*. A licence under that Act will become a licence under the new Act. Other transitional arrangements will apply.

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

OCCUPATIONAL HEALTH, SAFETY AND WELFARE (REGISTRATION FEES) AMENDMENT BILL

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

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The *Occupational Health, Safety and Welfare Act* has been in operation since November 30, 1987. The Act has successfully introduced a new approach for solving occupational health and safety problems in the workplace. The approach is based on employer and employee consultation at all levels. Employers and employees are strongly involved through their representatives on the Occupational Health and Safety Commission in establishing occupational health and safety policy, setting appropriate workplace standards and drawing up regulations and codes of practice. Employers and employees, through the workplace consultation systems encouraged by the Act, are directly involved in implementing health and safety systems and solving problems in their workplaces. The Department of Labour plays a vital role in providing support for workplaces to implement this new consultative approach.

Under section 67a of the Act employers are required to be registered. A periodical fee, known as the Employer Registration Fee, is payable for this registration. The revenue from this fee is used to meet part of the costs of the Occupational Health and Safety Commission and the Department of Labour. The registration fee is prescribed in the *Occupational Health, Safety and Welfare (Registration of Employers) Regulations* as a set percentage of the levy paid to WorkCover Corporation for workers compensation.

This approach to setting the level of the fee has led to some administrative problems. The provisions of this Bill establish a more effective system for setting the level of the registration fee.

The government's success in reducing WorkCover levies has led to a situation where the revenue from the Employer Registration Fee is also being reduced. This has the potential to effect the level of services provided by the Occupational Health and Safety Commission and the Department of Labour. The tripartite Occupational Health and Safety Commission has recommended that the process for calculating the fee be modified. This Bill gives effect to that recommendation. The Bill proposes that the revenue to be raised by the Employer Registration Fee be prescribed rather than percentage of the WorkCover levy payable. WorkCover is delegated the task of determining the appropriate percentage of levy needed to raise the revenue.

Under the current system the fee reflects each employer's potential use of occupational health and safety services. This is because it is based on the WorkCover levy which takes account of an employer's size, the industry risk and any bonus or penalty applied for claims performance.

The Bill sets principles which WorkCover must adopt when calculating the fee for individual employers. These principles continue the current approach of basing the fee on an individual employer's size, industry and occupational health and safety performance.

In the event that WorkCover sets the fee at a level which raises more than the prescribed revenue, the Bill requires WorkCover to carry this excess revenue over to the next financial year. This excess revenue will be deducted from the collection target when WorkCover calculates the level of the fee for the following year.

The changes proposed in this Bill will retain all the effective features of the current system and has the benefit of ensuring that an agreed amount of revenue will be raised by the fee. This will assist the Occupational Health and Safety Commission and the Department of Labour in planning.

At present the level of the fee is prescribed by regulation. The Bill sets the revenue to be collected and the principles used by WorkCover to calculate the level of the fee for individual employers. These provisions of the Bill can be changed by regulation. This approach has been taken to ensure that the new system is introduced in time to be implemented for the 1993/94 financial year. It is anticipated that in subsequent years the revenue to be collected by the fee will be prescribed by a regulation.

The Bill proposes that revenue from the fee in 1993/94 will be $3,349,000 which is the revenue target for 1992/93 plus a 1.7% increase. The increase is based on an estimate of the inflation between March 1992 and March 1993. This will maintain revenue in real terms.

It is important that revenue which supports the government's occupational health and safety services be maintained in real terms. The services provided by the Occupational Health and Safety Commission and the Department of Labour have made a significant contribution to improving health and safety in South Australia's workplaces. This improvement in health and safety is not only making South Australia a better place in which to work and live, but is also reducing the costs to industry and society which result from work injuries and diseases. These cost reductions include all the hidden costs of injury and disease such as interruptions to production, the training of replacement labour and replacing damaged equipment as well as the more obvious costs of workers compensation levies. Maintaining revenue from the Employer Registration Fee will assist the Commission and the Department of Labour in continuing to support employers

and employees in implementing a successful consultative approach to the prevention of work injury and disease.

In conclusion, the Government is of the view that this Bill will establish a more administratively effective system for setting the Employer Registration Fee and will ensure that revenue is maintained for the very important services provided by the Occupational Health and Safety Commission and the Department of Labour.

The provisions of the Bill are as follows:

Clause 1: Short title

This clause provides for the short title of the measure.

Clause 2: Commencement

It is proposed that the measure come into operation on 1 July 1993.

Clause 3: Amendment of s. 67a—Registration of employees

This clause amends section 67a of the Act to provide that a fee payable by a registered person under this section will be set by the Workcover Corporation taking into account certain criteria, and the total amount that is to be raised by fees paid under this section for the particular financial year. The amount to be raised under this section for the 1993/94 financial year is set out in the legislation. The regulations will be able to prescribe the relevant amount for subsequent financial years. Any such amount will be made up of two components, one being an amount to be retained by Workcover to off-set costs incurred by it in undertaking registrations and collecting fees under the provision, and the other being the amount that is to be paid to the Department of Labour. The Treasurer will continue to set guidelines relating to the making of payments by Workcover to the Department of Labour.

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

OCCUPATIONAL HEALTH, SAFETY AND WELFARE (PLANT) AMENDMENT BILL

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

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

The *Occupational Health, Safety and Welfare Act* has been in operation since 30 November, 1987. The Act has successfully introduced a framework for solving occupational health and safety problems in the workplace. The approach is based on consultation and on ensuring the participation of everyone in the workforce. Employers and employees are strongly involved through their representatives on the Occupational Health and Safety Commission in establishing occupational health and safety policy, setting appropriate workplace standards and drawing up regulations and codes of practice.

The *Occupational Health, Safety and Welfare Act's* current coverage includes *plant* in all workplaces located in South Australia (except Commonwealth property); regulations and approved codes of practice under the Act prescribe health and safety standards for plant used at particular types of workplaces, for example, industrial premises or construction sites.

Other legislation covering plant in South Australia includes the *Lifts and Cranes Act* and the *Boilers and Pressure Vessels Act* (both administered by the Department of Labour) which apply to the design, manufacture and use of particular types of plant regardless of whether or not the plant is located in a workplace. The safety of amusement structures is covered under the *Places of Public Entertainment Act;* this Act is currently administered by the Department of Public and Consumer Affairs.

As a result of the State Government's commitment to achieving national uniformity of occupational health and safety standards by December 1993, it is proposed to replace all plant—specific legislation with a national health and safety standard for plant, called up under State occupational health and safety legislation. The national health and safety standard for plant is due to be finalised as close as possible to June 1993. To adopt the finalised national health and safety standard for plant in South Australia, it is necessary to amend the *Occupational Health, Safety and Welfare Act* before repealing the plant-specific legislation, to ensure that public safety interests are protected as some hazardous plant is located in premises other than workplaces.

The provisions of this Bill will allow for all health and safety standards relating to plant in South Australia to be consolidated under the *Occupational Health, Safety and Welfare Act.* It will facilitate the adoption of the national health and safety standard for plant. It will also ensure that public safety interests are protected in relation to hazards arising from certain types of plant including lifts, cranes, pressure equipment and amusement structures.

The Bill is a matter of priority because of the South Australian Government's commitment to participate in achieving national uniformity of occupational health and safety standards by December 1993. This commitment was given by the Premier at a meeting of Heads of Government in Adelaide in November 1991. It has been reaffirmed at subsequent meetings of the Conference of Commonwealth and State Ministers of Labour (MOLAC) during 1992.

MOLAC 50 (April 1992) agreed that plant should be given first priority for national uniformity. Responsibility for developing the national health and safety standard for plant was given to the National Occupational Health and Safety Commission. To facilitate adoption of the national health and safety standard for plant MOLAC 50 further agreed to organise legislative amendments where necessary to ensure that principal occupational health and safety Acts are consistent in relation to coverage of all industries, coverage of plant (recognising the importance of associated public safety issues), and provisions relating to the adoption of subordinate instruments. The capacity to cover all plant currently covered under plant-specific legislation is the only area where the *Occupational Health, Safety and Welfare Act* in South Australia does not currently meet the national uniformity requirements.

As well as meeting the national uniformity objectives, the Bill will also progress Government policy to rationalise regulatory requirements in this State, and the South Australian Occupational Health and Safety Commission's programme to rationalise all occupational health and safety regulatory requirements. The amendments proposed in this Bill will facilitate the adoption of the national health and safety standard for plant which will result in the subsequent repeal of two Acts and the following regulations:

- the regulations under the *Lifts and Cranes Act;*
- the regulations under the *Boiler and Pressure Vessels Act;*

- requirements relating to amusement structures under the *Places of Public Entertainment Act*

- plant safety requirements in six sets of regulations under the *Occupational Health, Safety and Welfare Act;*
  - plant requirements in regulations under the *Mines and Works Inspection Act;* and
  - plant requirements in regulations under the *Petroleum Act.*

The Bill amends the objects of the *Occupational Health, Safety and Welfare Act* to ensure the scope of the current plant-specific legislation is maintained, and includes the types of plant to which the Act's coverage will extend in a new second schedule.

The second schedule lists the types of plant (whether or not such plant is situated, operated or used at any workplace) to which the Act's coverage will extend. There are five categories listed and definitions have been included. The definitions have been drafted to ensure consistency with the definitions provided in the national health and safety standard; they also ensure that existing coverage under plant-specific legislation is maintained.

In some of the definitions provided the type of plant is of a 'prescribed kind', that is, it will be prescribed in regulations. The reason for this is that the definitions are broad and are designed to encompass any plant which is likely to be a risk to the health, safety and welfare of employers, employees and the public. However, it is not the intention to extend the coverage beyond that of the existing plant-specific legislation in South Australia. Exclusions will be handled via the regulations which will be developed once the national health and safety standard for plant is finalised.

The Bill also proposes amendments to relevant duty of care requirements and allows for inspectors under the *Occupational Health, Safety and Welfare Act* to implement the provisions relating to the specific plant, wherever the plant is located. The Bill ensures that public safety interests are protected in relation to hazards arising from the types of plant listed in the second schedule, that is, amusement structures, cranes, hoists, lifts and pressure equipment.

In conclusion, the Government is firmly of the view that this Bill is fundamental to achieving national uniformity of occupational health and safety standards by December 1993. The Bill is an important part of Government policy to rationalise regulatory requirements on business in South Australia and will be of benefit in streamlining the services provided by the Government in relation to ensuring the health and safety of employers, employees and the public from the hazards associated with plant. Accordingly, I commend this Bill to the House.

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides that the measure will come into operation on a day to be fixed by proclamation.

Clause 3: Amendment of s. 3—Objects of Act

This clause provides for an amendment of the objects of the Act in view of the fact that the Act is to extend to certain plant that may not necessarily be located at a workplace.

Clause 4: Amendment of s. 4—Interpretation

It is necessary to amend the definition of "**plant**" to include any plant referred to in the second schedule (even if that plant is not used at work). Furthermore, for the purposes of the operation of the Act, the safe operation or use of any such plant is to be deemed to be an aspect of occupational health, safety and welfare.

Clause 5: Amendment of s. 24—Duties of manufacturers, etc.

This clause will extend the duties in relation to plant under section 24 of the Act to plant to which the Act extends by virtue of the second schedule.

Clause 6: Insertion of s. 24a

This clause places specific duties on the owner of any plant to ensure that, so far as is reasonably practicable, the plant is maintained in a safe condition, that the plant complies with any relevant regulation, and that adequate information is supplied to any user of the plant.

Clause 7: Amendment of s. 38—Powers of entry and inspection

This amendment will allow inspectors to enter any place where any plant to which the Act extends by virtue of the second schedule is situated. However, an inspector will not be able to enter a place which is not a workplace except at a reasonable time.

Clause 8: Amendment of s. 40—Prohibition notices

Clause 9: Amendment of s. 41—Notices to be displayed

Clause 10: Amendment of s. 42—Review of notices

Clause 11: Amendment of s. 45—Action on default

These clauses all contain amendments which will ensure that improvement and prohibition notices can be issued under the Act in relation to defective plant of a kind specified in the second schedule.

Clause 12: Amendment of s. 64—Evidentiary provision

This clause contains a consequential amendment.

Clause 13: Amendment of s. 66—Modifications of regulations

This amendment will allow the occupier of a place where any plant specified in the second schedule is situated to apply under section 66 of the Act for the modification of a regulation that applies in relation to the plant.

Clause 14: Amendment of s. 67—Exemption from Act

This clause will allow applications to be made in appropriate cases for exemptions under the Act in respect of plant specified in the second schedule.

Clause 15: Amendment of first schedule

This makes a consequential amendment.

Clause 16: Substitution of second schedule

This clause repeals the existing second schedule of the Act, which is now redundant, and enacts a new schedule that extends the operation of the Act to certain kinds of plant. The operation of the schedule (and the Act) will be subject to any exclusion or modification prescribed by the regulations.

Clause 17: Repeal of the Boilers and Pressure Vessels Act

The *Boilers and Pressure Vessels Act 1968* is to be repealed.

Clause 18: Repeal of the Lifts and Cranes Act

The *Lifts and Cranes Act 1985* is to be repealed.

Clause 19: Transitional provisions

This clause will empower the Governor to make, by regulation, such transitional provisions as appear necessary or convenient on account of the enactment of the measure.

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

ADJOURNMENT

At 5.6 p.m. the Council adjourned until Wednesday 28 April at 2.15 p.m.