LEGISLATIVE COUNCIL

Thursday 6 May 1993

The PRESIDENT (Hon. G.L. Bruce) took the Chair at 11.3 a.m. and read prayers.

GUARDIANSHIP AND ADMINISTRATION BILL

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

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

Motion carried.

CRIMINAL INJURIES COMPENSATION (MISCELLANEOUS) AMENDMENT BILL

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

Page 4, after line 28—Insert clause 8 as follows:

Amendment of s. 13—Imposition of levy

8. Section 13 of the principal Act is amended—

(a) by striking out from subsection (3) (a)(i) '$5' and substituting '$10';

(b) by striking out from subsection (3) (a)(ii) '$20' and substituting '$40';

(c) by striking out from subsection (3) (b) '$30' and substituting '$60';

(d) by striking out from subsection (4) '$10', twice occurring, and substituting, in each case, '$20'.

The Hon. C.J. SUMNER: In some vain hope that members might have a change of heart, I move:

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

The amendments would put the levy back to what was originally proposed by the Government when the Bill was introduced. I understand that the Hon. Mr Griffin is opposed to that, as is the Hon. Mr Gilfillan. That is disappointing, for the reasons that I have outlined, namely, the importance for victims of keeping the fund in reasonable shape. However, we have debated it at length and I do not think I will be able to convince members. In the vain hope that there has been a change of heart, I have moved that we accept the amendments made by the House of Assembly.

The Hon. K.T. GRIFFIN: Whilst hope springs eternal, the Attorney-General's hope is in vain, and certainly we do not intend to resile from the amendments that were carried in the Council when the Bill was dealt with previously. Our view was that the levies, except for those relating to expiation notices, should be increased by the amount of inflation, and that we were not at all happy about any increase in the $5 levy on expiation notices. We were defeated on that by a combination of the Government and the Australian Democrats, so what left here was a proposal to increase the levy on expiation fees from $5 to $6 and then other increases, relatively speaking, were to be in line with inflation. In two instances it was a dollar or two more than inflation and in one instance it was in line with inflation. So, there is a margin there. We have taken the view in relation to expiation notices that there is a dramatic increase in revenue from expiation fees and that it is appropriate that that be drawn upon rather than dramatically increasing by 100 per cent the levies across the board. So, I will be moving to amend the amendments that have come from the other place.

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

That the House of Assembly's amendments be amended as follows:

No. 1. Paragraph (a)—Leave out '$10' and insert '$6'.

No. 2. Paragraph (b)—Leave out '$40' and insert '$25'.

No. 3. Paragraph (c)—Leave out '$60' and insert '$40'.

No. 4. Paragraph (d)—Leave out '$20' and insert '$13'.

Amendments carried.

The Hon. K.T. GRIFFIN: I seek the indulgence of the Committee to raise another issue relating to this matter, and I appreciate the Attorney's prompting in relation to it. I have, within the past day or so, received an opinion presented to the Victims of Crime Service and I have been contacted by several other persons from different groups seeking to raise an issue about the method by which non-economic loss will be calculated. I indicated to the persons who contacted me that the Bill had very largely been dealt with in the Parliament and I told them that I did not think there was much I could do other than to attempt to raise the questions which arise in an opinion from Mr Russell Jamison to the Victims of Crime Service. So, I think all I can do is raise the issue of concern. The opinion that Mr Jamison has prepared and which has been provided to me by the Victims of Crime Service states:

Under the new provisions claims will be assessed on a scale of 0 to 50 in respect of non-financial loss. This is similar to a scheme which was introduced to the Wrongs Act in 1986 with respect to motor vehicle accidents.

He also says:

The Wrongs Act provided for a scale of 0 to 60. The maximum of 60 was said by the courts to apply only to the worst imaginable (and therefore hypothetical) case of pain and suffering in loss of amenities, loss of life expectation and disfigurement. All other cases were to be measured against that standard. The court concluded that the worst imaginable case awarded in those days (1986) was in the order of $240 000. If the new maximum was to be $60 000 the court then considered that all cases ought to receive about one-quarter of what they received previously. The result was, of course, a dramatic reduction in payments for non-economic loss.

If this formula is applied by the courts, and in my submission it must be, then the current worst possible case payout in 1993 would be at least $250000 and with the ceiling set at 50 all claims for non-economic loss can be expected to receive about one-fifth of what they presently receive. I must stress that in the case of the Wrongs Act the judges try to take a flexible approach to the rule and did not automatically reduce claims to one-fourth of their value and have tended through various loose arguments to award slightly more. But the Wrongs Act is indexed for inflation and full payment is made. Under this Bill there is no provision for inflation and the victim will only get 75 per cent of their claim after the first $2 000.

It is not entirely accurate to say that if this Bill is passed all victims will receive one-fifth of what they previously would have received for non-economic loss. In practice they could get slightly more than one-fifth of what they would previously have

received but more likely the court might feel that the present maximum common law claim is much more than $250 000, perhaps $400 000 or more, in which case the awards which victims of crime will receive under this Bill could be as little as one-sixth to one-eighth of the present common law assessment.

The Act at section 7(10) presently provides that no order will be made for compensation where the amount is less than $100. The Bill will change this to $1 000.

My recollection is that the Committee finally agreed on $500 for that. Mr Jamison continues:

The effect of this is that if any claim is brought which does not achieve $1 000 then no compensation will be paid. Likewise, no legal expenses or disbursements will be given in such an event.

The Hon. C.J. Sumner: It's $750.

The Hon. K.T. GRIFFIN: Sorry, $750. There was some bargaining, or negotiation, I should call it, and it was $750. He continues:

The effect, in my opinion, of this Bill is that many compensation claims which do not involve economic loss will no longer be able to be brought. In a typical example a person whose nose is broken in an assault may expect to receive $4 250 *(vide* the recent judgment of Judge Nyland in *Barton v SA and Lewis,* judgment D2564, delivered 23 April 1993). In that case a severely broken nose received assessment of $5 000, which was then reduced by application of the formula to $4 250. Under the proposed Bill any person receiving a broken nose as a result of an assault who does not have substantial economic loss is unlikely to succeed since the chances of reaching the minimum threshold of $1 000 [which is now $750] would not be good and in the event of not reaching the threshold the unsuccessful victim would be liable for legal costs and disbursements.

I am particularly concerned that the Bill is silent on the question of retrospectivity. It is impossible to know whether if from the date that the Bill is proclaimed it will apply to all claims brought or settled after that date or only apply to criminal injuries occurring after that date.

My understanding, although the Attorney might correct me, is that the normal principle would be that it relates only to injuries occurring after the date when the Act comes into operation. The document continues:

One can readily appreciate that very many victims stand at risk of dramatic reductions in their claims for events prior to the date of proclamation. Every effort must be made to ensure that all potential claimants are warned of this risk and that the Government is imposed upon to either amend this legislation to clarify the position or provide ample time and warning before proclaiming the Bill.

I have taken a little time to read that in some detail, because it is an important issue. When the Bill was before us in Committee, I must confess that I had not received any adverse criticism from anyone in relation to that scheme for calculating non-economic loss and, on the basis of what was presented to us and of my very limited knowledge of personal injury claims, it seemed to me that it was not an unreasonable proposition and it would not result in significant reductions of amounts paid to victims of crime.

The opinion that has been presented is a more detailed and careful assessment of the effects of the Bill. I undertook to raise it and wonder in the circumstances, and quite belatedly, whether the Attorney-General might be able to reassure us in relation to the potential effect of the amendments as suggested by Mr Jamison.

The Hon. C.J. SUMNER: Three points were raised by Mr Jamison. The first is that he indicated that the requirement to give not less than three months notice in writing setting out the claim would result in additional cost and delay in the processing of claims. In fact, the reason for doing that is the very reverse, namely, to facilitate the processing of claims by trying to resolve a good number of them before court proceedings are taken. So, this three month period will enable negotiations to occur before court proceedings are entered into between the applicant victim and the Crown, to try to resolve the matter without recourse to legal proceedings. So, in fact, it is designed to reduce costs and reduce delay, not to increase them.

The second substantive point raised by the Hon. Mr Griffin regarding Mr Jamison's opinion, as he has outlined in reading the relevant sections of the opinion into *Hansard,* can be responded to in this way.

First, we must always remember that criminal injuries compensation is a scheme of last resort, ultimately paid for by the taxpayer or by a levy on other offenders, including motorists. Again, it is a levy on taxpayers, albeit offenders who are taxpayers. The scheme has always been seen as one of last resort.

As far as pain and suffering is concerned, when amendments were made to the Wrongs Act, a scale of nought to 60 was introduced to try to contain the escalating costs of damages awards for pain and suffering resulting from motor vehicle accident claims under that Act. I have always argued that a person who suffers a criminal injury should not be placed in any more disadvantageous position than a person injured in a motor vehicle accident in so far as that is possible. Of course, it is not always possible, because motor vehicle accidents are subject to insurance and criminal injuries compensation is a subvention on the general revenue or levies on criminal activity. However, in earlier amendments that the Government introduced, the Parliament agreed to match the payments for solatium—payments for grief—in the Wrongs Act with those in the Criminal Injuries Compensation Act. I think it is reasonable to try to get some kind of parity in so far as that is possible.

The next point that needs to be made is that, as has been indicated, at present the fund is in trouble. It will clearly now still be in trouble, because the proposal to increase the levy has not been agreed to, so there will be a further commitment of taxpayers' funds to the Criminal Injuries Compensation Fund. The introduction of the scale under the Wrongs Act had the effect of containing pain and suffering payments. In the same way, the introduction of a scale of nought to 50 in the Criminal Injuries Compensation Act will also have the effect of containing payments that are made for pain and suffering under that Act—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Yes, for the future—and will in some circumstances reduce the amounts that some victims might have received had this measure not been introduced. However, that has to be balanced against the fact that the fund is in trouble and that it is a compensation scheme of last resort. It does not affect economic loss or special damages: it deals only with the question of pain and suffering. If a measure like this

were not introduced, the cost of this scheme would balloon beyond what I think is reasonable. The principle at the moment is that, if we assess at large at common law the amount of damages and it exceeds the current maximum of $50 000, the victim is entitled to $50 000, subject to the formula in the Act. If that continues, there will be a massive drain on the fund.

This brings it back more or less in line with the Wrongs Act, although it is true to say that the maximum in the Wrongs Act is higher, I think because it is related to inflation. When the Wrongs Act was introduced I think it was something like $65 000, and I think it is now up to something like $84 000. We do not have a provision for inflation in the Criminal Compensation Act because we usually bring a Bill back to lift the maximum amounts from time to time. So, my proposal on this is that we just proceed, as it is going to, and that we assess is it in a year or so to see what effect it is having on awards to victims and, in particular, on the fund. There may be a future possibility, if the fund can be kept in reasonable shape, of linking the maximum to the maximum in the Wrongs Act, which would then be automatically increased by inflation. But I think a future Government, of whatever persuasion, would have to consider that matter in the future, depending on the status of the fund.

So the introduction of nought to 50 will have effects similar to those which occurred under the Wrongs Acts. My advice is that they will not be as dramatic as Mr Jamison says, and I think he concedes that by saying it is not a mathematical formula that the courts use. I also point out that $1 000 was the minimum figure which was in the Government's Bill. That has now been reduced to $750, which is more in line with inflation since 1969 and, of course, that lessens the impact in terms of what he was saying in his opinion.

Therefore, on a scale of one to 50 if the injury is given a scale of two then the victim would be entitled to $2 000 for pain and suffering; three, $3 000 etc., and so on up the scale. That, of course, is in addition to any special damages or economic loss which are not picked up anywhere else.

One area of that which is apparently reasonably common is dental treatment because dental treatment is not covered by Medicare and is often not covered by insurance. So when there is an injury involving dental treatment often in those cases there would be economic loss which exceeded the $750, anyhow, but if you added that to the pain and suffering, even under the formula, you would get over the $750, so a claim could be made.

As to retrospectivity, I do not think it is in doubt. My advice is that it is not in doubt; it is not retrospective. Section 14a of the Act makes it clear that the compensation is to be assessed in accordance with the law at the time when the injury occurred, so I do not believe that there is any basis for his concerns on the issue of retrospectivity. I think we have to monitor it to see how it works, and to see what effect it has on the fund and also on payments to victims. It is a matter that should be revisited again in 12 or 18 months time.

The Hon. K.T. GRIFFIN: I appreciate the Attorney-General's response. As I said when I raised it, I thought the Bill had gone too far and that, whilst it may have been possible to make any amendments by sending the whole matter to a conference, it seems to me that that is not a particularly satisfactory way of dealing with the issue. But, with the assurance that the matter is to be kept under review, certainly whatever happens at the election, if we should be in office—as we would hope to be—then we will also keep it under review to ensure that it does not create any situation of unfairness in the way it is applied. I thank the Attorney-General for the information he has provided.

Motion as amended carried.

FINANCIAL INSTITUTIONS DUTY (REDUCTION OF DUTY) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 28 April. Page 2136.)

The Hon. R.I. LUCAS (Leader of the Opposition): The Liberal Party obviously supports the legislation before the Parliament at the moment. The Bill proposes a reduction in the rate of financial institutions duty from the present .1 per cent to .065 per cent from June 1993 and then ultimately to .06 per cent from 1 October 1995.

It is useful to note that there are still differentials between the States, ranging from Queensland, which still does not have a financial institutions duty, through to what seems to be an average of about .06 per cent, although—and I do not have a note here—Victoria might have increased it in its most recent budget.

I remember the debate back in financial year 1990-91 when the Government hiked the financial institutions duty significantly from .06 to .1 per cent. There was a huge outcry in the community, from business in particular, about the effects of the legislation on South Australian business. Business leaders and representatives indicated at the time that there would be an outflow of funds from South Australia to other States and that there would be a lack of preparedness to invest in South Australia partly because of the increase in FID—and not solely, of course, business investment decisions are taken for a whole variety of reasons.

However, the general climate of State taxes and charges, of which the financial institutions duty is one important component, is obviously an important reason for interstate and international investors when they decide in which State of Australia they might want to invest their hard won dollars.

So, that was the common view of the business representatives and business leaders back in financial year 1990-91. Of course, sadly the Government response from the key Ministers in this Government—from Premier Bannon; from the key industry Minister, the now Premier Arnold, the man who has been in control of industrial development in this State for almost half a decade now and who has presided over the decline of our manufacturing industry base and the loss of some 20 000 to 30 000 jobs or more in our manufacturing industry over the last two to three years, as well as from other economic.

Ministers such as the Treasurer and non-economic but senior Ministers such as the Attorney-General—was to ignore all those warnings from business leaders and, in effect, to say 'We know better; we understand the

economic environment in South Australia; we understand the influences on business investment decisions; we understand better than business leaders where businesses will move their funds if there are differentials in the rates of State taxation such as the financial institutions duty.' The sad fact is—and it gives us no great pleasure to stand up in this Parliament this morning to indicate—that again, on a key economic decision, the Bannon-Arnold Government got it badly wrong. It hiked the rate and there was, over the past two to three years, a significant problem for South Australian industry as a result of this decision taken by the Bannon and Arnold Governments.

As I said, the new Premier cannot wash his hands like Pontius Pilate of the economic decisions of the past decade, because he has been a senior economic Minister for at least the last part of the 1980s. We now have the new Premier trying to kowtow favour, I suppose, with the business community by saying, 'Here we are, maybe three or six months before an election. We will now drop your financial institutions duty rate back to .065 per cent and then .06 per cent.' Of course, all this Government and this Premier are doing is taking the rate back to that which existed prior to the increase two or three years ago. So, we were at .06 per cent and the Government hiked the rate to .1 per cent—against all the best advice available. Then, of course, three years later it finds out that it got it wrong; that it made another mistake. It is now dropping the rate back to the 1990 rate of .06 per cent, eventually.

All this legislation—and we are supporting it, as I indicated—really is a further admission of economic incompetence from Premier Arnold and from the senior economic Ministers of the Labor Government of the past decade. I do not intend on this occasion—given it is the last day, hopefully, of the session and we need to get through significant pieces of further legislation—to list all the other economic errors that this Government has made over the past 10 years, such as those in relation to the State Bank, SGIC, SATCO and so on. I will leave that for another occasion and if the Parliament reconvenes in the August session that would be a more appropriate time.

The Hon. T. G. Roberts interjecting:

The Hon. R.I. LUCAS: I really wanted to offer something concrete to the Hon. Terry Roberts to get him over this bleak winter period. I suspect that as his photograph was not in the *Sunday Mail* he is not winging his way overseas.

The Hon. Anne Levy: That is only Liberals.

The Hon. R.I. LUCAS: Premier Arnold is a Liberal, is he?

The Hon. Anne Levy: Other than.

The Hon. R.I. LUCAS: And Terry Groom is a Liberal, is he? Susan Lenehan is a Liberal, is she? I will not be deflected by the Minister injecting out of her place. As I said, I do not intend to delay this particular debate by going through the economic history of the Government. I just want to place firmly on the record that with this particular decision, again, we have another indication of where the Government got it wrong, and got it wrong badly, to the detriment of South Australian industry and business.

It is one of the reasons why we still have unemployment of 10 per cent or 11 per cent in South Australia. It is one of the reasons why we have a youth unemployment rate of well over 30 per cent in South Australia. It is because this Government and senior Ministers like Premier Arnold are sadly out of touch; they are economically incompetent; and they do not understand the decisions and the reasons why businesses make investment decisions in this State and in this nation.

As a result of that lack of understanding, we see pieces of legislation like the 1990-91 hike and we now have to see the embarrassing backdown as has been indicated by the piece of legislation before us. With that brief contribution, I indicate Liberal Party support for the legislation before the Council.

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

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

Consideration in Committee of the House of Assembly's amendment.

Clause 3, page 3, after line 3, new subclause (4).

(4) For the purposes of this Act in relation to a return by a member—

(a) Two or more separate contributions made by the same person for or towards the cost of travel undertaken by the member or a member of the member's family during the return period are to be treated as one contribution for or towards the cost of travel undertaken by the member;

(b) two or more separate gifts received by the member or a persion related to the member from the same person during the return period are to be treated as one gift received by the member;

(c) two or more separate transactions to which the member or a person related to the member is a party with the same person during the same return period under which the member or a person related to the member has had the use of property of the other persons (whether or not being the same property) during the return period are to be treated as one transaction under which the member has had the use of property of the other person during the return period.

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

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

The House of Assembly's amendment relates to a situation where a number of gifts or benefits are received from one source during a return period. It operates to ensure that, where the total amount of the gifts or benefits received amounts to more than $750 in the same return period, the source of those gifts or benefits must be disclosed.

The issue arose during the Committee stage of the Bill in this Council and I foreshadowed at that stage that there may be a need for an amendment to clarify that where more than one benefit is received from the one source during a return period the benefits must be aggregated. The Hon. Mr Griffin indicated that he had always taken the view that gifts and donations did have to be aggregated. However, it is not clear that the Act,

as it was, did require aggregation and this amendment clarifies the issue.

The Hon. K.T. GRIFFIN: I support the amendment. As the Attorney-General said, I always was of the view that if you received several gifts from a particular person within the return period they would have to be aggregated, but I am happy to ensure that that is put beyond doubt by supporting the amendment. I move:

Clause 4, page 3, lines 15 and 16—Leave out 'has had the use of any property of another person during the whole or a substantial part of' and insert 'has been a party to a transaction under which the member or person related to the member has had the use of property of the other person during'.

This amendment is consequential. Because this clause also deals with the aggregation of transactions involving the use of property during the return period used by the member or a person related to the member, I think this amendment is necessary to ensure consistency of drafting.

Amendment carried; motion as amended carried.

NATIONAL PARKS AND WILDLIFE (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 30 April. Page 2251.)

The Hon. PETER DUNN: The Opposition supports this Bill. In fact, the Opposition introduced a similar private member's Bill in another place several months ago, but it was rejected because the Government said that it would introduce this Bill. If we look at the history of this matter, we will find that it was proposed to introduce a Bill to enable the farming of emus as far back as 1989-90. So, this legislation has taken some time. In the meantime, we raised the hopes of a few farmers who were seeking diversification. As we all know, primary industry in this State is suffering badly from low income and high costs and it is felt that diversification may assist in providing income for some farmers. This is a totally new industry, although emus have been around for as long as man. The Bill is divided into two parts and has been brought in as a measure connected with National Parks and Wildlife.

I guess there is some connection there, although I suspect it is very tenuous. The fact that the emu is a protected wild bird at the moment brings it within this Act, but to be quite honest it ought to be covered by primary industry legislation. If we are to farm this bird commercially, it needs to be included in that industry, and I will explain that a little more, particularly with respect to research.

Under permit, a number of farmers have purchased these birds that have been bred in captivity, particularly in Western Australia. They pay between $100 and $150 per bird, and they are being run on Eyre Peninsula, probably because it is closest to Western Australia, but also because it is a suitable climate for the emu. In any event, emus run wild in that country. Last Sunday I was fortunate to be able to visit a very small emu farm with only about 30 birds. It was very interesting. I am informed that they will eat just about anything. They react very much like poultry in any other form in that they like to scratch around, they like a bit of greenfeed and grain of all sorts. They will consume a much wider range of foods than the normal domestic poultry. I suspect that research will prove that the emu will be bred to grow much larger by selection. As with all commercial animals today, by a process of selecting them over 100 years, they are much larger, easy to handle and relatively docile.

The emu is not easy to handle. I observed one escape from the enclosure on Sunday, and it took a number of people and a couple of sheep dogs to get it back in again, with a great deal of difficulty. Once they get loose, they are a difficult bird to handle. They will require selection over a period so that they can be driven ultimately like ducks and geese are driven. In the long term I suspect we will be able to obtain birds that are more gregarious than the emu at present. If you clap your hands among some emus, they will go in all directions. It is difficult to round them up and keep them in a confined space. That will have implications later when we come to slaughter them or use them for commercial reasons. They will create a problem if they have to travel great distances. I have just highlighted a couple of facts that will need looking at in the future, as an overall picture of the emu.

As this is sunrise legislation, members ought to be aware that the emu's actual name is *dromaius novaehollandiae.* We could expect a name like that for the emu, because it has a very small brain!

The Hon. K.T. Griffin: Did you say *'dromaius'?*

The Hon. PETER DUNN: Yes.

The Hon. K.T. Griffin: Is it related to the dromedary camel?

The Hon. PETER DUNN: That is quite so. It obviously looked like the camel when they first saw it. The *novaehollandiae* relates to the fact that we were discovered by the Dutch; I guess that is why it has that name. It is an amazing bird. It has great agility and great speed. Once the female has laid the egg, the male sits on that egg for a long time. That would be of interest to some members in this place, but I had better not continue with that line too much or I might be looking after siblings myself.

The emu is an interesting bird and its farming will have prospects. Great fortunes will not be made from the industry in the future, but the industry will allow for diversification of income. Certainly, I suspect the most important aspect of the industry is that it will ensure the continuity of the species. From my observation, where species are endangered or vulnerable and are then bred commercially and become valuable, they are always retained. Emus will be bred in such numbers that they will be looked after. The ostrich is a perfect example of that. We already have ostriches in South Australia. In the late 1880s or about 1890 ostriches were introduced on a station just north of Port Augusta and there are remnants of those ostriches, and they are very valuable today.

Ostriches bring about $60 000 to $80 000 pair—an enormous cost. Certainly, because of the large number of emus in the wild, emus are not an endangered species. There are colossal numbers in the Gawler Ranges and in the north of South Australia up to about level with the east-west railway line. Below that line there are huge numbers of emus that come down in the dry season and

we see plenty on the roadsides after they have failed to negotiate a car or truck. I do not believe emus are endangered because of their huge numbers in the outback. To ensure that there are emus for all to see and witness in the future, commercial breeding will achieve that aim.

The Bill allows a permit for farming of emus, allows one to take eggs from the wild and allows for emus in captivity to be destroyed, which under the present law people cannot do. Permits will be issued to people who meet certain criteria and standards. People will have to log the eggs that are taken from the wild and keep a proper record of them. That is important in the initial stages of the commercialisation of the industry, that good records are kept, because research will be done on emus and the industry will be looking for birds with lighter coloured meat.

The emu is fairly wild and has a relatively dark meat, but it has been noted that, as soon as emus are commercialised, as in Western Australia and in other States, the meat becomes much more tender, lighter in colour and much nicer to eat. I made that point yesterday when talking about tuna which, when caught in the wild, have a rather dark meat but, when farmed and given a different diet, their meat becomes much lighter in colour and much more sought after by consumers. I think emu meat is much the same.

With the commercialisation of the industry, we will be seeking emus that have more meat on them and seeking to gain greater value from feathers and better quality by-products, such as leather, oil and so on, which can improve the value associated with the bird. The Bill provides for a code of management to be established. That is rather interesting. Who is going to set out the code of management initially? I hope that those responsible visit other States where they have already been farming emus for some time to obtain a reasonable understanding of the method by which farmers are likely to run these animals.

Certainly, Australian animals are quite different from animals in the rest of the world and emus are no exception. Therefore, the code of management needs to be particular with respect to this. The people with the most knowledge and experience with the emu are obviously in Western Australia, and possibly New South Wales. So I hope that the State does send somebody to investigate methods and management techniques that are being used there.

Clause 60c(4) of the Bill provides:

A person to whom the Minister grants a permit under subsection (1)—

that is, a permit to obtain eggs and animals—

must be a member of an organisation.

That really does smack of unionisation. Primary industry commercially has run without unionisation. Unionisation is voluntary at the moment, and I hope it remains that way. Unionisation is not easy simply because primary industry is so spread out. I guess there is a reason for it, that is, to keep within certain boundaries what people are doing with these animals. I will accept the measure at this stage, but I am not entirely happy that people must belong to an organisation before they can be given a permit.

It is interesting to note that already there is an association in South Australia called the Emu Farmers Association. I am not sure whether it comes under the umbrella of the South Australian Farmers Federation: I suspect it will in the long-term, purely on a monetary basis. The South Australian Farmers Federation is a lobby group which assists this Parliament in its role in forming legislation. In the meantime, everyone will have to become a member of the Emu Farmers Federation before they can get a permit. Of course, that Emu Farmers Association—or whatever association—must be approved by the Minister. So he has a fairly tight rein on just who will get the permits and which associations will be approved for assistance with this industry. Furthermore, the Minister or his officers will be able to control where eggs are taken from the wild, who will take them and how many. I suspect that it will be done where there is a necessity to reduce the population.

I have spoken about the draft code of management, but I would just like to put into *Hansard* what the Bill says about that code of management. I suggested a moment ago that perhaps the State should send someone interstate to investigate emu farming there, in order to get a reasonable code of practice. Clause 60d(2) provides:

The code must address the following matters:

(a) the effect of taking individual animals and eggs from the wild on the species concerned and on the ecosystem which they form part of.

That implies that animals other than emus will be involved, and that is quite correct. The Bill that was introduced in another place related specifically to emus, but this Bill covers a wider area, and I suspect that, under regulation, it will be confined to emus. So, this code of practice will cover not just emus but animals coming out of the wild that may in future be commercially farmed. Further, the Bill will address:

(b) the welfare of the animals in captivity.

(c) the need for research in relation to farming the species concerned.

(d) the identification of the animals and the animal products.

(e) any other matters that should, in the opinion of the Minister, be addressed.

How long will it be before this code of practice is drawn up? I suggest that it should be done as soon as possible, because the industry is actually up and running in this State. People are holding birds, but they cannot deal in them because legislation is not in place that allows them to do that.

They have brought birds in from other States after paying big money for them. They are breeding the numbers up but at this stage some of them feel that they would like to reduce their numbers, but cannot, because there is no enabling legislation. So, I would like to see this code of practice introduced. Can the Minister tell me how long it will be before the code of practice is completed? There is also a royalty to be taken from these animals. It is stated that the royalty must be paid into the Wildlife Conservation Fund. As I mentioned earlier, I believe that is totally the wrong place for it. I understand why that provision is in place. I understand the Minister's thinking that, because the birds are coming from the wild, the money ought to go back into the fund, but I cannot see the mechanism by which the National

Parks and Wildlife Service or the wildlife conservation groups can carry out the research.

A certain amount of administration will be involved, and I can understand that, and a certain amount of money will be required after that for research and for the future well-being of the industry. It is going to be a commercial operation, and to pay the royalties into that wildlife fund seems contrary to what we do now and have done in the past. I am concerned that the funds may be rorted and bled off for other reasons. I am not saying that that will occur, but it can occur and we have seen that happen in the past. I would rather see the money go into something like the South Australian Research and Development Industry (SARDI). There are also places like Roseworthy where research is conducted into emus and ostriches. That is the place where we need a concentration of those moneys raised from the industry.

The industry itself is a sunrise industry, and therefore will require a considerable amount of research in its initial stages. I hope that the Minister ensures that organisations like SARDI or Roseworthy, or whoever does the research, are able to access funds from the Wildlife Conservation Fund. I do not believe that research is carried out through the Wildlife Conservation Fund other than out in the wild, and that is not what this operation is about. They can do all the research they want to in the wild in those areas where emus are found, but this is a commercial operation where the animals will be contained. Therefore, I think that different problems will arise, particularly when you bring wild animals into enclosure and restrict their movement. They will finish up with a number of diseases that do not manifest themselves in the wild. Generally, animals do not live as long in the wild. When they are brought together like this we will introduce things like worms, tick, mite and so on. I know that they are present in the wild but they seem to survive with them because they are not so close together.

A huge amount of research will have to be done initially, and I would rather see the funds go to Roseworthy where they are already carrying out work on it. A clause in the Bill, which deals with molestation of protected animals, provides that one cannot injure them, molest them or annoy them. I think that that clause is probably right. It seems a bit unusual in a Bill like this to have that provision. The second part of the Bill provides for large fines for interfering with endangered or vulnerable species. There is a $10 000 fine for molesting an endangered species; a $7 500 fine for vulnerable species; and a $5 000 fine for rare species, and the equivalent imprisonment terms.

It also has an interesting little quirk in that it refers to marine animals, which brings it in line with the Fisheries Act whereby, if you are caught molesting, catching, shooting or destroying marine animals (seals, sea lions, dolphins and small whales), there is a $30 000 fine. That is fairly draconian but I guess it is seen as necessary to protect those animals. I have no problem with that part of the Bill. It is quite reasonable, because it is just bringing it into line with the Fisheries Act. The Opposition thinks that the Bill ought to be up and running as quickly as possible. I would hope that that happens and that it sees the light of day quickly. The Opposition reserves the right to alter some of the matters I have mentioned, such as the royalties and a couple of other issues that deal with the operation of commercially-run emu farms. We will reserve that right and may do just that after the next election. The Opposition supports the Bill.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

HERITAGE BILL

Adjourned debate on second reading.

(Continued from 30 April. Page 2218.)

The Hon. DIANA LAIDLAW: The Liberal Party supports this Bill, and we recognise that it is an important piece of legislation. It is part of a package of legislation that has been introduced by the Government in this session to address development and environmental management matters. The other two Bills that were part of this package have been the Development Bill, which we have debated at length in this place and fortunately finished last night, and the Environmental Protection Authority Bill, which will be introduced in the next session. We would argue in respect of this Bill, as we argued on the Development Bill, that it would have been desirable had that package of three important pieces of legislation been introduced at the one time in this session so they could have been looked at and addressed together rather than in this *ad hoc* fashion. It is a disappointing and unsatisfactory process when we are addressing such important matters, nevertheless that is the way the Government has sought to address these Bills.

The goal of the Government has been to rationalise legislation that impacts on planning and development in this State and, as was reported earlier, apparently there are some 109 pieces of legislation or provisions in this State at the present time that impact on planning and development matters. It is desirable that these are rationalised. The Development Bill was prepared in a manner that can ensure by regulation that more and more of these secondary or related development provisions can be brought under the ambit of the Development Act. In this session we have also dealt with the Statutes Repeal and Amendment (Development) Bill, which amended some nine pieces of legislation as part of this process of rationalisation, and that will continue in the future.

However, it is appropriate that we maintain separate heritage legislation, because the issue of preserving and conserving our built heritage is sensitive and important not only in terms of the development debate but also for the future character of the City of Adelaide and towns generally in the State. We already have the State Heritage Act as a separate piece of legislation, which will be repealed by this Bill.

This Bill also amends the Aboriginal Heritage Act 1988, the Native Vegetation Act 1991, the Strata Titles Act 1988 and the Valuation of Land Act 1971. It responds to concerns and shortcomings that have been identified following an extensive review of current policies, practices and procedures relating to the law and administration of built heritage conservation items in this State.

One of the most important features of the Bill is that more people will be able to have a say at an early stage in identifying properties in areas that are important for conservation and cultural tourism. This will be possible through the Development Bill, which will provide local councils with opportunities to prepare local development plans and, in that process, local communities will have a great deal of opportunity for input. It is most important that that opportunity for input be taken up, because this Parliament seeks to ensure that one of the worst features of development in the past few years is overcome. That feature, of course, is the freezing out of local input in local planning and development matters. I earnestly hope that the provisions of the Development Bill in terms of the framing of local development plans are utilised actively by local communities.

Of course, we also have another provision for community input at an early stage, and that arose from amendments moved in this place and later accepted by the Parliament in relation to consultation with the community in terms of the preparation of the planning strategy. The planning strategy is to be a Government document to guide the local development plan and, according to the Development Bill as it left this place last night, it will be a requirement upon the appropriate Minister to ensure that, in the framing of the planning strategy and amendments to it, material for public consultation is prepared and notices are inserted in papers or circulated generally to advise people of these changes. In addition, the Minister must invite written submissions on the changes. So, both in terms of the development of the planning strategy, which is to guide local development plans, and in the preparation of the local development plans themselves there will be enormous opportunities for community input in the future.

That is an initiative that the Liberal Party has been keen to support and to strengthen. The Bill also gives owners and other interested parties more opportunity to have their views taken into account in respect of the registration process for heritage items and areas. When the authority intends to enter a place on the register, it will be required in future to give notice to the owner, setting out the reasons why it considers the place is of heritage value; the proposed authority must also inform the Minister and the local council and give public notice in a newspaper.

From the time of that public notice, the place being considered for registration is provisionally entered on the register and must be treated as a heritage place for planning purposes. At this stage anyone who wishes to make a submission either for or against entering the place on the register will have three months in which to do so. The submission in this instance must be in writing, and we made that same provision last night in terms of people wishing to express interest in the planning strategy.

There will also be provision for a person making a submission to request to be heard in person by the State heritage authority. In turn, the authority must consider all submissions before deciding whether to confirm the entry of the place on the register. If the Minister considers that the entry of the place on the register would not be in the public interest, there is provision for the Minister to direct the authority not to do so. There is also provision for a provisional entry that has not been confirmed within 12 months to be removed from the register.

Overall, the registration process is one which we accept and which provides much greater input for the owners and for all interested parties. Of significance, I think, is the fact that the authority must consider all these submissions before deciding whether or not to confirm the entry of the place on the register. I would argue that there are a great many avenues for the community to have a say and to exercise that say at an early stage in this planning process and in the registration process.

Other important initiatives in this Bill include the right of a landowner to seek a certificate from the authority guaranteeing that an area of land will not be entered on the register for a period of five years from the date of the issue. A further initiative is new provisions in the Bill that will enable places of special geological and archaeological significance to be identified by the authority. The Bill will allow, however, for excavating or collecting of specimens from these places to be controlled by permit. These provisions are intended to be used only for a small number of scientifically valuable and fragile regions, of which there are a number in this State, such as the Pre-Cambrian fauna deposits to the north of the State. There are provisions in this Bill addressing emergency protection and heritage agreements, and there is a range of transitional and miscellaneous provisions relating to appeal rights.

This issue of the conservation of built heritage is a most important one not only for the character of the State but for the future economy and vitality of the State. The Arthur D. Little report, issued in August 1992, entitled 'New Directions for South Australia's Economy', addressed tourism as one of the important opportunities within the service industries on which we must place much greater emphasis in future if we are to revitalise South Australia. Of course, the revitalisation of South Australia would be the goal of every member in this place and the community in general. Under the section on tourism—I note that aviation and the wine industry were also identified—the Arthur D. Little report suggests that there are a number of development opportunities and requirements.

In terms of the Adelaide metropolitan area, the initiative suggested is to make Adelaide the centre for cultural tourism in Australia. The Liberal Party would strongly endorse that initiative. It is an initiative on which we would have liked the Government to concentrate more actively, not just in terms of rhetoric, over the past 10 years.

The North Terrace cultural boulevard is a case in point. Over the past three years the Government has established a North Terrace cultural group to seek initiatives to do something about enhancing the status and appearance of North Terrace. There has also been a North Terrace action group, comprised of people who have business interests in the area. The Adelaide City Council has also addressed this issue and commissioned a number of architects to prepare plans for upgrading North Terrace.

Finally, I understand that SACON has also been asked by the Government to look at the redevelopment of our

major cultural institutions—the Library, Museum and Art Gallery—within a timeframe of 10 years. A great deal has been talked about, some action has been taken in terms of the structure of more committees, but there seems to have been very little liaison between those committees established at State Government, local government and community levels.

The worst part of this whole thing is that we have seen so little change in that time. This is most disappointing, because those who are particularly interested in cultural tourism and the arts would know of the major efforts being made by State Governments to maximise cultural tourism as a key for tourism and employment in other capital cities. We will have a great deal of work to do in this State if we are to realise the recommendation in the Arthur D. Little report to make Adelaide the centre for cultural tourism in Australia.

The Arthur D. Little report is recommending not simply that we should make Adelaide the centre for cultural tourism in this State, as there would be other competing interests in the State for that title—I suspect that Penola would be very interested to pursue such status—but also that we should aim to achieve this in Australia. To do so, we will need a great deal more concerted and coordinated effort at all levels of government, involving the community; we will need money for the programs; we will need promotion; and we will also need strong heritage legislation to ensure that Adelaide can maintain quality-built heritage items in the future.

I believe that this Bill has the potential to realise that last objective. It is important to note also that the A.D. Little report not only confined its interest in cultural tourism to the Adelaide metropolitan area but also recommended in general, 'That we focus on large niche special interest markets that South Australia can serve', and identified the following potential markets: food and wine, cultural heritage and nature experiences. The Arthur D. Little report is recommending that cultural heritage, which includes built heritage, be a focus for tourism in Adelaide and across the State.

I know that the Minister, who is present in the Chamber, when she was Minister of Tourism, was preparing tourism development plans in the Barossa and a number of other areas. I see those tourism development plans as being very much related to the Development Bill and the Heritage Bill that we debated last night, because tourism in our country towns and regional centres will be potential growth areas for the economy and will require a focus on built heritage and cultural tourism.

This brings me to an issue that has disturbed me for some time, and that is the matter of our heritage railway stations. We have a number of outstanding railway stations in the Adelaide city area and the country. They are Government property in the sense that they are owned either by the STA or Australian National, and a number of them are heritage listed. Yet these railway stations, notwithstanding the Government's rhetoric about seeking to encourage the listing of heritage items and to promote cultural tourism, has been lax to the degree that it has been totally irresponsible in its refusal to care and maintain these railway stations. In doing so it has set an example for the rest of the community to follow.

The North Adelaide Railway Station is a case in point. It is near the Entertainment Centre and adjacent to the parklands and could well be utilised for a number of initiatives as well as being an asset to the community—that is, if the Government, through the STA, had shown any interest in maintaining the building. The fact is that it is now inhabited by squatters, it has suffered fire damage and it is in dire danger of losing all potential even for being restored, let alone utilised again. It is without question an eyesore when it should be an asset, yet this building is on the heritage list and is owned by the Government.

Of course, we have other examples in country areas. Last year the National Trust produced an excellent report entitled 'Railway Heritage of South Australia', and recommended a range of options at Federal and State level that could be undertaken to maximise our railway heritage for cultural tourism.

A number of railway stations have been sold by the State Transport Authority in recent years: Riverton, Kapunda and Wallaroo are three such stations. They have been purchased by the private sector and are being transformed into community assets. I would argue very strongly that if the Government is not prepared to maintain these buildings in respect of their heritage listing the Government should be speaking with councils and the private sector to purchase these buildings at a reasonable price so that they can be returned to the community as assets to be enjoyed by tourists generally who would be prepared and keen to visit the area.

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: The Minister interjects and says, 'We do it wherever we can.' That is so, but what has been a disincentive in this process is the fact that so many of the buildings have been allowed to run down in the meantime, and then to purchase them and undertake all the major work on conserving them is a considerable disincentive for anybody investing in that project. That is my point: it is an enormous disappointment to me that the Government has listed these railway stations, as I would wish it to do, but then has refused to invest in the maintenance of those stations, which is appropriate for their heritage status.

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: I think, Minister, it is an obligation on Government generally to maintain its assets, whether it be engineering and water supply assets or road assets—and certainly that is a focus of the Department of Road Transport now—or heritage assets.

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: Well, one must invest in them. The Government keeps adding to its assets—the national parks is a fine example—but it does not maintain the assets that it has now. That has certainly been the case in railway heritage terms.

The Hon. Barbara Wiese *interjecting:*

The Hon. DIANA LAIDLAW: If you do purchase them you have to look at how you are going to maintain them. People do not purchase a house and then see it run down so that they do not have a valuable asset when they wish to sell it or pass it on to the next generation. Yet, this Government is acquiring the assets but not maintaining them, so that they lose their value. That is what has happened with a lot of the railway heritage.

That is my strong argument—and it would be supported by local communities, the people who are fortunate enough (and some do not see themselves in such a light) to have heritage listed property. I believe the Government should be setting an example for others to follow.

The Hon. Barbara Wiese: Where does the money come from?

The Hon. DIANA LAIDLAW: Well, where does the money come from? If you had been more responsible for the way some of the business enterprises in Government had operated we would have a considerable amount of money for a whole range of initiatives and we certainly would not be having to look at some of the tax Bills that we have had to address earlier this day. But, as the Government has got this State into such a financial nightmare, we will have to look at a whole range of innovative programs to maintain the assets—those that the Government does not propose to sell to pay the debts. We have to look at the longer term as well as the short term and, if the Government is going to heritage list its properties, then it has to maintain those properties and not let them run down like the North Adelaide railway station. Perhaps on her way home to the south-western suburbs the Minister could pass that station and she would know what a horrible sight and a wasted opportunity that building is at the present time. So, the issue of heritage railway stations is a very important one; so is the whole question of the Government being responsible for the heritage listed buildings that it owns.

I would like to raise the issue of heritage boats with the Minister. This issue has been raised with me in recent days by those who have an interest in the PS *Marion* at Mannum and who are restoring this wooden hulled vessel. They have had considerable difficulty with the Department of Marine and Harbors because the regulations for registration of vessels through surveys do not make provision for the heritage vessels, such as the PS *Marion, th*e *Oscar W,* or the boat named *Industry.* Of course, we saw this even more recently on the Torrens Lake, when the owners of Popeye were required to get rid of all their wooden-hulled boats and invest in these new rather antiseptic, sterile-looking Popeyes that now ply the Torrens Lake.

I believe very strongly that there must be the flexibility in our regulations to provide for the registration of these heritage wooden-hulled vessels. The Government's statement, presented in this place earlier this week, entitled 'A bias for 'Yes'', if it has any credibility, would suggest that the Department of Marine and Harbours would be able to establish separate regulations for safety in terms of wooden-hulled heritage vessels.

What is happening now with these vessels, and what will happen to the PS *Marion* shortly, is that they will be registered in either New South Wales or Victoria. Both States seem to be able to accommodate the heritage needs of the community and in terms of tourism, but at the same time address those heritage and tourism needs with safety concerns on our waterways. So, if New South Wales and Victoria can do this, I am not sure why South Australia finds that it has to be so inflexible.

In addition, I am not sure why—at a time when the State needs all the money it can get—the Government and the Minister in the Chamber now should be prepared to see South Australia lose the registration of these vessels to those other States.

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: The Minister says that she is not. I am heartened to hear that something may be done in the terms of the inflexibility within the Department of—

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: It has not been brought to the Minister's attention. I do not want to get sidetracked on to the subject of the Department of Marine and Harbors, but it tends to have an inflexible lot of people when it comes to this regulatory process. We found that out most recently last year when the Legislative Council was forced to disallow regulations about houseboats—

The Hon. Barbara Wiese interjecting:

The Hon. DIANA LAIDLAW: And the Minister is fixing that. I am pleased about that. However, it is a pity that the Minister has had to get involved and that she has had to reprimand departmental officers and tell them that they need not be so rigid in their views and frustrate so many initiatives from enterprising people who are keen to be involved in tourism and heritage.

I am pleased that this issue of wooden-hulled heritage vessels has been drawn to my attention, as it was earlier this week after, I understand, a year of frustration with people within the department and considerable correspondence. The people who have contacted me will very pleased that I have raised it here and even more pleased that the Minister will be addressing the subject.

The issue of preserving trees is one that has been discussed in Government for at least three years. It has been the subject of a white paper and other publications. It is not the subject of this Bill, but I understand it will be the subject of separate legislation in the next session. In principle, I am keen to see that legislation; the detail will be of interest to all members.

I believe that a lot of important trees in our community are assets. I am ageing myself by saying that I and members of my family and friends still talk about the old gum tree that was at the Toll Gate near the corner of Glen Osmond and Portrush Roads. That is the sort of tree that we never should have lost by simply cutting it down for road works and housing development, and that is the sort of tree that is such an important landmark that it should be the subject of preservation orders.

Lastly, I address the issue of incentives because this has been a matter of debate for a long time in our community. It is a matter about which a broad cross-section of people with an interest in heritage are becoming increasingly frustrated. The National Trust is keen to see incentives at Federal, State and local level and so is the Business Owners and Managers Association (BOMA). It is important that we in this place and other levels of government recognise that, in addressing heritage, we must seek not only to do so through controls and restrictions but also to balance those necessary controls with encouragement to the owners to be proud of their heritage listed property and maintain it.

This matter has been addressed in the Liberal Party over time. I know that the member for Adelaide in another place was instrumental through the avenues of the Liberal Party in gaining a commitment from the

Party when Andrew Peacock was Federal Leader that there would be tax incentives and tax breaks for heritage listed properties. The Liberal Party will continue to pursue this sort of initiative, and it is one that the shadow Minister, the member for Heysen, is working hard to address. It is also important that this matter be addressed through local government rating policies and the like.

We have a number of amendments to the Bill which we believe will improve the legislation. A number of amendments were moved in the other place, and I am pleased to see that in the other place all but three of our 15 or 18 amendments were accepted by the Government. I thank the Government for that, and commend the member for Heysen for putting forward those positive initiatives. In conclusion, I commend the National Trust for the work it is doing in the community to promote heritage conservation and to encourage financial return from its properties because they are assets of our community. I wish it well with its advocacy work in the future. I support the Bill.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

[Sitting suspended from 12.55 to 2.15 p.m.]

GUARDIANSHIP AND ADMINISTRATION BILL

At 2.16 p.m. the following recommendations of the conference were reported to the Council:

As to Amendment No. 3 - That the House of Assembly no longer insist on its disagreement thereto.

As to Amendments Nos 4-7 - That the Legislative Council no longer insist on its amendments but make the following amendments in lieu thereof:

Clause 21, page 10, after line 35 - Insert subclause as follows:

(2) In performing his or her functions the Public Advocate is not subject to the control or direction of the Minister.

New Clause, Page 10, after clause 21 - Insert new clause as follows:

Public Advocate may raise matters with the Minister and the Attorney-General

21a. (1) The Public Advocate may, at any time, raise with the Minister and the Attorney-General any concerns he or she may have over any matter arising out of or relating to the performance of his or her functions under this Act or any other Act.

(2) If the Public Advocate so requests, the Attorney-General must cause a report of any matter raised by the Public Advocate under subsection (1) to be laid as soon as practicable before both Houses of Parliament.

(3) The annual report furnished by the Public Advocate under this Act must include a summary of any matters raised by the Public Advocate under subsection (1).

and that the House of Assembly agree thereto;

and that the Legislative Council make the following consequential amendment:

New Clause, Page 38, after clause 83—Insert new clause as follows:

Expiry of Act

84. This Act will expire on the third anniversary of its commencement.

and that the House of Assembly agree thereto.

As to Amendment No. 10—That the Legislative Council amend its amendment by inserting after the words "the Board must" the words ", if it thinks it appropriate to do so,".

and that the House of Assembly agree thereto.

Consideration in Committee of the recommendations of the conference.

The Hon. T. CROTHERS: I move:

That the recommendations of the conference be agreed to.

I would like to speak briefly on the outcome of the conference and the manner in which it was conducted. The opposition that came from this Chamber was basically centred upon members of the Council believing that the person who would fit the office of Public Advocate would be a person whose absolute independence should be unfettered and guaranteed. It was felt by the respective managers that that position might best be served if the Public Advocate reported to the Attorney-General as opposed to the provisions of the Bill which ensure that the Public Advocate must report to the Minister of Health.

Members of another place felt that with the Public Advocate having to report to the Attorney-General, as opposed to the Minister of Health, it would lengthen the corridors of communication. It was considered that, in so doing, it would make it somewhat more difficult for any patients in respect of the Public Advocate taking up an issue on their behalf. That was one point of view that was put forward. Another point of view was put forward in respect of the fact that the sunset clause, which is now being proposed as a compromise relative to the whole position I have just canvassed, would in fact ensure that Parliament would be the supreme body relative to any positions that might arise from the fear that the Public Advocate was not free and unfettered. It was felt by some members that, whilst there may well be grounds for the fears of this Council, at this stage they are perceived fears and not something that may eventuate in the further light of day when the system has had an opportunity to get up and running.

It was felt that the sunset clause, which, if my memory serves me correctly, would be of three years duration, would ensure that the Council could, in the fullness of time, after the amendments that are now before this Council had been up and running, ensure that our fears were not realised in respect of there being any fetter on the independence of the Public Advocate.

For those reasons, and in the best spirit of harmony, the Council managers here were able to reach out, touch fingers across the ether with the managers in another place and reach a compromise which should, it is felt in no small measure, alleviate the fears of anyone who would consider that the Public Advocate had been fettered over that period of three years.

In addition, the Public Advocate will, if he or she feels fit, be free to communicate any fears to the Attorney-

General and will have absolute access to any legal advice that he or she might deem fit to receive, and that is to be done in such a way as not to interfere in any shape or form with the independence of the Public Advocate.

It was also felt that a clause should be inserted to provide that the Public Advocate would not be under the direct instructional control of the Minister of Health. So, for those reasons, and maybe others on which some of my colleagues who represented this Chamber at that meeting may wish to elaborate, the amendments as circulated are now before honourable members, whose committee of managers recommend those amendments to this Chamber.

The Hon. M.J. ELLIOTT: I rise to support the motion, but do so most reluctantly as I have some fears about the consequences of this Council's not insisting on its original amendments. The most important amendments that we moved sought to place the Public Advocate directly under the Attorney-General and not within the Health Commission or its structures, so that, first, instruction might not find its way from the Health Minister to the Public Advocate, but more importantly and more subtly we were also attempting to separate the Public Advocate from the offices of the Health Commission and particularly offices of the Guardianship Board.

The potential for the influence that one has, because of shared cups of tea and bikkies over a long period of time, is subtle but indeed, I believe, very dangerous. On many occasions the public advocate may need to question what the Guardianship Board has done. When you are good friends and have been regularly sharing tea and coffee and bickies it becomes increasingly difficult to play that role. The role is supposed to be one of an advocate for the public and there should be a real attempt to distance the public advocate away from the structures that are under examination from time to time, and certainly, the public advocate should be as close to the public as possible. When one has a threat that the whole legislation may fail one has to consider one's position very carefully. Only in those circumstances was I willing to consider the amendments that we now have before us which are nowhere near satisfactory, but the rest of the legislation is far too important to allow it to fail.

The public advocate is a new position. I think that the way things will go is entirely predictable but the one thing that gives me heart within the amendments that we are looking at is that there is a sunset clause of three years and, if my worst fears are realised, then this place will have an opportunity in three years to rectify the situation. On the other hand, I may be wrong. I suppose as a politician I do not like to be wrong but in this case I hope that the legislation works well for the sake of so many people I have worked with so often who have been so frustrated with the way the current system works and, in many cases, does not work. The Democrats support the motion.

The Hon. J.C. BURDETT: I, too, support the motion and I agree with the remarks of the Hon. Michael Elliott. All the principal amendments, except No. 10 which was mine, were his amendments and I thought the principle behind them was good and I still think it is good. The principle was that if you have an advocate—a person who is going to be an advocate for the consumer and for third parties—who is going to have an advocateship role to play then that person should not be absorbed into the incestuous bureaucracy of the Health Commission and the Guardianship Board. That I took to be the principle of the Hon. Mr Elliott's amendments. His concerns were

very well justified.

First, the advocate was to be responsible to the same Minister as the Health Commission and the Guardianship Board and, secondly, located in the same place and part of the same administration. In the tea and bickie situation to which the Hon. Mr Elliott referred, you are not really an independent advocate. An advocate must be independent; there is no point in having one otherwise. I support the idea of having a public advocate for people in these situations, and for the people who are concerned and their welfare, and I think that is one of the best aspects of this package of Bills. You might as well not have a public advocate if he is not really that, if he is not really independent. I am not satisfied with the compromise which has been arrived at and, as did the Hon. Michael Elliott, I agreed with it because the alternative was to lose the Bill or, at any rate, to lose the package of Bills maybe or to lose the public advocate aspect of it.

The sunset clause provides some sort of out but not a very satisfactory one. I do not recall too many cases of sunset clauses where the Bills have not eventually proceeded after the sunset period has expired. I am not satisfied with the outcome, but I think we were forced into it, because the alternative was to lose the public advocate aspect of the Bill at least, or perhaps the whole package of Bills. Reluctantly, I support the motion.

I also refer to amendment No. 10, which was my amendment. That related to prescribed treatment; that is, termination of pregnancy and sterilisation. The present law provides that parents must be informed in cases where it is practical to do so and have an opportunity to make representations to the board with substantial exemptions or exceptions in cases where the board considers that to notify the parents and allow them to make representations would be contrary to the interests of the person concerned. That was omitted from this legislation. I introduced the amendment substantially to write it back, again with substantial outs. That was one of the amendments that the House of Assembly asked us not to insist on. However, during the conference the Minister agreed to leave it there with the words 'if it thinks appropriate to do so' added. I have no objection to that, because there were other exceptions that the Guardianship Board could invoke anyway. Therefore, that more peripheral matter is acceptable.

In regard to the main thrust, the autonomy and separateness of the public advocate (the Hon. Mr Elliott's amendment), I am disappointed with the way that things have worked out, but this was the best that we could do on behalf of the Council. I support the motion.

The Hon. R.J. RITSON: The compromise put to us by the House of Assembly has produced clear legal independence for the office of public advocate, but it has failed to quarantine the administration, which is what the original position in the Hon. Mr Elliott's amendment would have done. Interested parties in dispute with the board will still be dealt with by the same administrative staff acting for the public advocate at the same premises,

and perhaps by the same counter staff as those with whom they dealt when the dispute arose. Nevertheless, as the Hon. Mr Burdett has pointed out, the principal Act is very important. It interdigitates with two other very important Acts, and we felt that it was not worth putting any of those Acts in jeopardy. Therefore, I, too, recommend that we accept the House of Assembly's compromise.

The Hon. G. WEATHERILL: I also support the motion, but I do not do it reluctantly. Although members in the Committee were very concerned about the independence of the public advocate, I did not have that problem. I think they were jumping at shadows, because it had not been tried, and there was a proposal that we should have a sunset clause to consider it. There was talk about people having tea and bickies together. Judges have tea and bickies together, but I do not think they convince each other about different cases. Lawyers, even though they may be on opposite sides in a trial, have tea and bickies together, and they do not have a problem with it. I honestly believe they are jumping at shadows and I think that in two or three years time, or whatever the case may be, there will not be any problem, none whatsoever. I therefore support the report.

Motion carried.

GENDER DISCRIMINATION

A petition signed by 42 residents of South Australia concerning Justice Bollen's summing up to the jury in a recent rape in marriage trial and praying that this Council will:

1. look into ways and means of officially condemning the statement and officially warning the Justice of his unacceptable attitude of gender discrimination;

2. request the Government to encourage and promote education for the judiciary into attitudes which discourage any form of domestic violence;

3. request the Government take a lead in gender sensitivity training for law enforcement personnel and judges was presented by the Hon. Bernice Pfitzner.

Petition received.

PRINTING COMMITTEE

The Hon. T.G. ROBERTS: On behalf of the Hon. R.R. Roberts, I bring up the second report for 1992-93 of the Printing Committee and move:

That the report be adopted.

Motion carried.

STEFANI, HON. J.F.

The Hon. C.J. SUMNER (Attorney-General): I seek leave to make a statement on behalf of my colleague the Hon. R.J. Gregory, Minister of Labour Relations and Occupational Health and Safety relating to the Hon. Julian Stefani.

Leave granted.

The Hon. C.J. SUMNER: This is an apology to the Hon. Julian Stefani from my colleague as follows:

On 24 March 1993 1 issued a media release entitled 'Stefani Accused of Abusing Parliamentary Powers'. My statement contained a defamatory statement about the Hon. Mr Stefani. My statement stated that the honourable member may have behaved improperly in his position as a member of the Legislative Council. I purported to set out details.

I accept that my facts were incorrect. The Hon. Mr Stefani has not abused his Parliamentary powers or position as a member of Parliament. I greatly regret any distress or embarrassment that my statement may have caused to the Hon. Mr Stefani or his family. I apologise to the Hon. Mr Stefani and withdraw my statement unreservedly.

SOUTH AUSTRALIAN GOVERNMENT FINANCING AUTHORITY

The Hon. C.J. SUMNER (Attorney-General): I seek leave to table a ministerial statement on the subject of the Government Management Board review of the South Australian Government Financing Authority, together with a copy of the report.

Leave granted.

SOUTH AUSTRALIAN FILM CORPORATION

The Hon. ANNE LEVY (Minister for the Arts and Cultural Heritage): I seek leave to make a ministerial statement on the South Australian Film Corporation.

Leave granted.

The Hon. ANNE LEVY: I wish to inform members that the Managing Director of the South Australian Film Corporation, Ms Valerie Hardy, today officially informed me that she would not be renewing her contract. Ms Hardy, who joined the corporation in May 1991, has accepted a position interstate. I would like to take this opportunity to express my sorrow at Ms Hardy's decision but I wish her well as she furthers her career.

During her time with the Film Corporation, Ms Hardy introduced a new discipline to the financial management at the Hendon headquarters. Ms Hardy demonstrated a very strong commitment to the organisation and has taken it through a very difficult financial period. Ms Hardy's departure raises a number of questions about whether the Film Corporation can continue in its current form. The structure of the film industry is changing right across Australia and perhaps now is the time to consider a new model for the management of film in this State.

The Film Corporation was due to be reviewed next year, but with Ms Hardy's departure it would now be appropriate to bring that forward. I would also like to inform honourable members that I have now received the report of the film working party. I will release that report in the very near future and seek industry comments on its recommendations for the future direction of film in South Australia.

QUESTION TIME

SOUTH AUSTRALIAN FILM CORPORATION

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister for the Arts and Cultural Heritage a question about Ms Hardy's resignation.

Leave granted.

The Hon. DIANA LAIDLAW: I am not surprised to learn that Ms Hardy, as Managing Director of the Film Corporation, has decided to resign or, as the Minister would more subtly put it, not to renew her contract. I and those who are also familiar with the situation would argue strongly that she has good reason to be disillusioned. She was appointed two years ago to revitalise a demoralised Film Corporation, which had suffered a $2 million loss following the *Ultraman* fiasco, which had accumulated losses of $4 million, which had severe cash flow problems and which had failed to perform as a producer for the past four years. Of course, the relations between the Film Corporation and the independent film sector were at rock bottom.

Ms Hardy has worked tirelessly with imagination and commitment to try to reverse this disastrous situation, but when it came time to discuss the renewal of Ms Hardy's contract, from June, it is apparent that the Minister was not prepared to extend her period of appointment to two years, which was the term sought by Ms Hardy and the board. The Minister insisted on one year only, and that was clear from the answer that she gave to a question I asked on this same matter on 22 April this year. The Minister at that time indicated that any period beyond one year would not be appropriate because it would prejudge the outcome of a further review that the Government proposed to have in relation to the Film Corporation. That review, from the Minister's statement today, is apparently to be brought forward.

Anybody who has taken an interest in the Film Corporation in recent years would appreciate that the corporation has been plagued with endless reviews over the past five years: the Milliken report in April 1988, the Simpson report in November 1988, the KPMG Peat Marwick report in December 1990 and the Kelly report which is yet to be released. The Minister said in this place on 22 April that she did not believe that it would be appropriate that Ms Hardy be offered a firm contract for a period longer than 12 months, with that contract being renewable subject to the outcome of the review of the Film Corporation.

The Minister also said that it would not be appropriate to conduct that inquiry before a further 12 months had elapsed. Now we find that Ms Hardy has resigned and the Minister is bringing forward that review. So, therefore, I ask the Minister: when did she learn—and I see from the statement today that she was officially told today but I understand she learnt of this earlier—that Ms Hardy was considering a job in Sydney because she was unhappy, as was the board, with the Minister and the department's handling of this contract renewal matter? Further, did the Minister reconsider her earlier decision not to offer Ms Hardy a contract longer than 12 months and, if not, why not?

In terms of the further review that the Minister is now considering into the Film Corporation, can she advise what model she is considering that is appropriate for the future management of film in this State?

The Hon. ANNE LEVY: What an amazing statement from the honourable member. She keeps talking about Ms Hardy's resignation. I corrected her once, which she accepted, and then she proceeded again to use the word 'resignation'.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: Obviously she cannot accept the situation that Ms Hardy's contract is about to expire and that she will not be renewing her contract.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: I am very sorry indeed that Ms Hardy is leaving Adelaide and the Film Corporation. I have expressed my regrets—

Members interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: —to her, to the media and to anyone who is interested.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order! The Hon. Ms Laidlaw will come to order.

The Hon. ANNE LEVY: The facts are that Ms Hardy has been made an offer which she cannot refuse. She has been offered one of the top four jobs in Australia in her field. There have been rumours about this matter for a number of months. I think the Basil Arty column was hinting about it late last year: it has been a fairly common rumour. However, I did not learn until today that it was definitely occurring, when Ms Hardy informed me this morning.

While I very much regret Ms Hardy's departure from South Australia, I fully understand that she needs to consider her career, and I accept that she has been made an offer that it is virtually impossible for her to refuse.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order!

The Hon. ANNE LEVY: Ms Hardy told me, and I am quite sure has told many members of the media, that the question of the contract time which was under discussion with her here had nothing whatsoever to do with her accepting this appointment interstate.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order! The Hon. Ms Laidlaw will come to order.

The Hon. ANNE LEVY: Mr President, she has been head-hunted by an organisation interstate. As I say, it is one of the four top jobs in the country. I regret that Ms Hardy will be leaving, but I respect her decision and I certainly wish her well indeed for her future career.

The other part of the honourable member's question referred to further reviews. As I indicated today in my ministerial statement, we will bring forward the review of the Film Corporation. It is not a new review; it was one which was foreshadowed over 18 months ago. It is not news to anybody that the Film Corporation was to be reviewed in 12 months.

It seems opportune, with Ms Hardy's departure, to bring forward this review so that it will take place now, particularly as I have just received the report of the film working party which the honourable member referred to as the Kelly report. The chair certainly was Ms Gabrielle Kelly, but the honourable member misunderstands the Kelly report if she refers to it as a report on the South Australian Film Corporation. It is no such thing: it is a report on the film industry in this country which, of course, includes the Film Corporation. It is an overview of the entire film industry in this State, of which the South Australian Film Corporation is a part—

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order! The Hon. Ms Laidlaw will come to order.

The Hon. ANNE LEVY: —but it is only one part. The honourable member asks about models. I hope to release the report of this working party in a very short time, and all interested people will be able to see that this report does discuss a number of models.

I do not wish to pre-empt any views which may be expressed by members of the industry. I hope to release the working party's report in the very near future, and I will await comments from industry members, with whom I want to have consultation relating to this report before any conclusions are drawn or any final decisions are made. To suggest that I have a preferred model at this stage would be insulting to members of the industry, who must have the ability to read the report, to comment on it and to express their views before the Government comes to any decision regarding its implementation. I look forward to comments from industry members and all those who are interested in the film industry in this State. Only at that stage will we consider how best to implement the recommendations in the report.

The Hon. DIANA LAIDLAW: As a supplementary question, is the Minister denying that as recently as three weeks ago Ms Hardy was prepared to continue to work in her current capacity with the Film Corporation, and therefore on her behalf the board was still pushing the Minister for a two year period for reappointment, not the one year that the Minister was insisting upon?

The Hon. ANNE LEVY: I did not speak to Ms Hardy three weeks ago. I am quite unaware of any purported remarks she may have made. Certainly, I have had no disagreement with members of the board in recent times on this matter. I can only say that the head hunting from the interstate organisation has been upping the ante in recent times, and it may be that three weeks ago, or within the past three weeks—

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order! The Hon. Ms Laidlaw will come to order.

The Hon. ANNE LEVY: —the offer became the one which she felt she could not refuse. Ms Hardy was well aware of our position and, as I say, she has informed me and the media—and I am sorry if the Hon. Ms Laidlaw does not believe what Ms Hardy herself says—and has made very clear that it was an offer from interstate which she felt she could not refuse. As I say, it is one of the four top jobs in the whole country. I certainly wish her well in her future career in Sydney.

ELECTORAL COMMISSIONER

The Hon. R.I. LUCAS: I seek leave to make an explanation before asking the Attorney-General a question on the subject of the Electoral Commissioner.

Leave granted.

The Hon. R.I. LUCAS: Last September at the annual conference of the South Australian Institute of Teachers, an attempt was made by members concerned with SAIT election procedures to have future elections conducted by the independent State Electoral Commissioner. This move was strongly opposed by the radical left wing leadership of SAIT, led by David Tonkin. In opposing the move, Mr Tonkin went on to make some outrageous allegations about the Electoral Commissioner which have been the subject of discussions between Mr Tonkin and legal representatives on behalf of the Electoral Commissioner. I will quote from a letter from the Crown Solicitor's Office to Mr David Tonkin, dated 24 November 1992, which states:

Dear Sir,

Re: Defamatory comments made at the Annual Conference of the SAIT, 5 September 1992.

I act for the State Electoral Commissioner.

I am instructed that at the abovementioned conference you made a number of defamatory comments about the Commissioner which I request that you publicly withdraw. The comments made include reference to the following matters:

(a) instances of the Commissioner rigging elections;

(b) that the Commissioner does not carry out elections competently;

(c) that the Electoral Commissioner is under the influence of Government because he is appointed by the Government.

I enclose a copy of the transcript of your speech given on that day with the subject comments underlined for your information.

As these comments are legally defamatory, I am instructed to request that you provide a formal and public apology to the Electoral Commissioner by the placing of the enclosed draft statement in the next edition of the SAIT Journal. I request that you provide confirmation of your agreement to this proposal by contacting me on the above telephone number by 30 November 1992. If I do not hear from you, I will inform the Commissioner, who will then consider any legal action that he may wish to take against you.

As a result of this debate and, in part, I guess, the allegations made by Mr Tonkin about the Electoral Commissioner, this move was defeated at the SAIT conference. I have been informed by a number of SAIT members that there has been no apology by Mr Tonkin and that for some reason the Government, or arms of Government, are not giving the Electoral Commissioner the support required to resolve this particular matter.

For example, I have a copy of a letter dated 29 April 1993, from one SAIT member to the Attorney-General, expressing a view to the Attorney-General which has been expressed to me by a number of SAIT members wishing to see this particular matter cleared satisfactorily from the viewpoint of the integrity of the Electoral Commissioner. The Attorney would be aware of this letter. I do not intend to quote all of it—

The Hon. C.J. Sumner: You would have to be joking!

The Hon. R.I. LUCAS: It is a relatively significant matter, I would have thought.

The PRESIDENT: Order!

The Hon. R.I. LUCAS: The Attorney indicates that he is not aware of it.

The Hon. C.J. Sumner: It is dated 29 April. I have been in here since 29 April!

The Hon. R.I. LUCAS: If he is unable to locate a copy of the letter in his office, I am happy to provide a copy of the letter to the Attorney-General.

The Hon. C.J. Sumner: I am sure I'll be able to locate it. At this stage, I have not seen it.

The Hon. R.I. LUCAS: I accept that the Attorney says he has not seen it yet. I quote from part of the letter to the Attorney-General from a concerned SAIT member, and the name is provided to the Attorney-General. It states:

I understand the Crown Solicitor's Office has acquiesced in not getting the statements corrected because the union members will end up paying for Mr Tonkin's costs' or words to that effect. If this is so, the Electoral Commissioner has been betrayed and teachers abandoned to an electoral system that is open to corruption. It has been suggested—

Members interjecting:

The Hon. R.I. LUCAS: This is a letter to the Attorney-General.

The Hon. Barbara Wiese: Who wrote it?

The Hon. R.I. LUCAS: The Attorney has the name in his office.

The Hon. Barbara Wiese: Who is it?

The Hon. R.I. LUCAS: I will not quote the person's name publicly.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: That is all here. The correspondent then goes on to make a series of claims in that letter to the Attorney-General which obviously will need some response from the Attorney-General. The correspondence concludes:

With the next SAIT annual conference due shortly, to allow the defamatory statements to stand would seem to be inappropriate to say the least. I appeal to you to correct the situation.

Will the Attorney-General seek an answer from the Electoral Commissioner about the claims made by Mr Tonkin, and what action, if any, is he taking to ensure that these claims are not left on the public record without having been either answered or withdrawn?

The Hon. C.J. SUMNER: This is a bit over the top, with respect to the honourable member. I have not seen the letter to which the honourable member referred. I personally do not recall this matter. It would appear that what has happened is that the Electoral Commissioner has asked the Crown Solicitor to act in it, from what the honourable member has said; that the Crown Solicitor has apparently acted for the Electoral Commissioner at least in writing a letter, because that is what the honourable member has told the Council. Beyond that I do not know what has happened in relation to the matter. Certainly there has been no intervention by me in relation to it and if someone said something like that about me I think that they could well end up at the end of a writ. Whether the Electoral Commissioner has taken the same view of the matter I cannot say.

The Hon. R.I. Lucas: He has taken that view.

The Hon. C.J. SUMNER: He may have. He apparently took that view back in November but whether he is still instructing the Crown Solicitor to proceed and, if so, with what, I do not know because I am not aware of the matter. I certainly do not recall being aware of it and I certainly have not seen the correspondence to which the honourable member referred and which, after all, was only written, according to the honourable member, on 29 April. Presumably it is somewhere 'in the system' as they say. However, I will certainly examine the matter. I will check with the Crown Solicitor whether he still has instructions from the Electoral Commissioner and, if so, what the position is in relation to it, and I will bring back a reply to the honourable member.

However, I would reject any implied criticism of the Government in relation to this matter because the Government has not, as far as I am aware, and certainly not through me, been involved in it and I would be very surprised if, as alleged in this letter, the Crown Solicitor acquiesced in not proceeding. I am sure that, if the Electoral Commissioner had instructed the Crown Solicitor, the Crown Solicitor would have proceeded in accordance with those instructions. However, I am not on top of the issue at this point. I will get a report and give a reply to the honourable member.

PUBLIC SECTOR REFORM

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

Leave granted.

The Hon. K.T. GRIFFIN: Mr President, in his ministerial statement on reform of the public sector earlier this week the Attorney-General said that the Government 'will also be encouraging public sector employees to seek opportunities to pursue their Public Service career in the private sector'. The Attorney-General further said:

Negotiations have begun with the Chamber of Commerce to develop joint work using both public and private sector staff.

Some members will recall that the Tonkin Liberal Government early in its term of office sought to develop opportunities for secondment of public sector employees to the private sector and *vice versa,* but was met by a brick wall thrown up by unions. There are obvious advantages of exchanges, but issues such as salary and other conditions, responsibility of the employee to which employer, liability to workers compensation are all issues which have to be addressed. In addition, there are questions about what might be regarded as so-called joint work, and whether or not the proposition in the Attorney-General's ministerial statement is really a means by which numbers in the public sector work force are reduced. My questions to the Attorney-General are:

1. Has the Government obtained the support of the Public Service Association and other public sector unions to its proposals and, if so, which unions have approved the proposals?

2. What principles are to be applied in relation to salary and conditions, liability for acts of the employee and to whom the employee is accountable, and will this

be open to all public sector employees or to just a limited number?

3. When does the Government expect to have a scheme in place, and what is proposed by the proposition that joint work will be developed in conjunction with the Chamber of Commerce? Will this provide a means by which some of the 3 000 jobs to which the Premier referred in his Economic Statement may be removed from the public sector?

The Hon. C.J. SUMNER: I do not think the proposal is to use this means to remove employees from the public sector. The Government has outlined its approach to that matter through the targeted separation packages, and I do not want to revisit that debate. The statement that I made was a statement of general principle. The detail of it is being handled by the office of public sector reform. I will get a report from it and advise the honourable member on where the matter is precisely. I think in principle that it is a reasonable proposition. It is the sort of thing that is happening in a number of areas now and so it should, and I think it will contribute to the aim of getting a more flexible Public Service.

WEST BEACH TRUST

In reply to Hon. G. WEATHERILL (10 March).

The Hon. ANNE LEVY: The Minister of Housing, Urban Development and Local Government Relations has endorsed my initial response to the honourable member's question and advised that the fifth report of the Economic and Finance Committee of its inquiry into the continued existence of the West Beach Trust, tabled on 10 February 1993 provides verification of this answer.

The repealed West Beach Recreation Reserve Act 1954 provided that the State Government make a contribution of $40 000 and the constituent councils (Glenelg and West Torrens) each contribute an annual amount of $2 800 to the Trust for the first seven years. Additional funding was provided to the Trust by the Commonwealth and State Governments in the years between 1974 and 1985 for participation in various unemployment schemes. To date the Trust has received State and Commonwealth grants totalling $2 351 000 which have been used extensively for capital works projects.

Apart from the specific grants mentioned above the Trust does not receive grants from the Government or from any other source.

Annual reports of the Trust for the past five financial years revealed that the Trust has recorded an operating surplus for four of those five years. The financial performance of the Trust enables it to be entirely self-sufficient. Funds required to develop and maintain the reserve are wholly self-generated.

BICYCLES

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Minister of Transport Development a question about 'Borrow a Bike'.

Leave granted.

The Hon. I. GILFILLAN: In the *City Messenger* of 10 March this year there was a very eye-catching photograph relating to 'Bike to Work Day' with the caption underneath 'Environment Minister Kym Mayes prepares for a ride on one of the bicycles which could soon be part of a borrow a bike scheme in the city'.

Members interjecting:

The PRESIDENT: Order! There is too much audible conversation in the Chamber.

The Hon. I. GILFILLAN: The article was entitled 'Borrow a bike idea could be a world first', and it states:

Imagine popping $4 into a slot for a bicycle instead of a shopping trolley and whizzing around the city by pedal power for a few hours?

The idea is not far from reality for Adelaide, which could become the first city in the world to run a 'borrow-a-bicycle' scheme. The Environment and Land Management Department is looking into the idea and already has a Danish prototype bicycle as a guide to the type of two-wheeler, which could become Adelaide's latest mode of transport.

Members interjecting:

The PRESIDENT: Order! I must be going deaf; I cannot hear the honourable member. Can we have less noise in the Chamber.

The Hon. Peter Dunn: He's on the right track!

The PRESIDENT: He would be if we could hear him.

The Hon. I. GILFILLAN: This subject is obviously a source of great humour to the non-cycling members of the Chamber. The article continues:

As project manager, Ms Sydney Wood explained, the bicycles would be locked in racks across the city, with people paying a coin deposit to borrow the bicycle for short journeys. The deposit is refunded when the bicycle is returned. 'We are still looking into the design of the bike to make it more theft-proof and we are also investigating manufacturing opportunities in SA,' Ms Wood said. The Danish-style bicycle has a unique design which allows advertising on its frame, plus low-maintenance solid rubber tyres and an aluminium frame, and because of the machine's unique design, any stolen bicycles would be easily recognised, Ms Wood said.

While the borrow-a-bike scheme is still in the pipeline, hundreds of two-wheelers will hit the streets next Wednesday, March 17, for Adelaide's second bike to work day. Environment Minister Kym Mayes will be among those pulling on bicycle shorts for a cycle into the city next week.

Members interjecting:

The PRESIDENT: Order!

The Hon. I. GILFILLAN: The Minister said:

I rode a bike to work for 10 years while I was in the Public Service, but these days I just don't have the time.

I rode my bike to work on that day and I ask the Minister for Transport Development:

1. Did the Environment Minister, Mr Mayes, ride to the city on 17 March as promised in the article? If he did, he was uncharacteristically inconspicuous and indeed, he may have been deterred by the daunting dangers of riding on our distinctly user-unfriendly roads.

2. Has the Environment Minister been badgering her to have the borrow-a-bicycle scheme implemented?

3. Has the project manager, who is quoted in the article, Ms Sydney Wood, had discussions with the Minister and/or her department about facilities for borrow-a-bicycle or, as I fear has been the case, is this just another example of tokenism in an effort by this Government to con the public that they are serious about encouraging cycling?

The Hon. BARBARA WIESE: I find the last statement made by the honourable member offensive. He does not even know the answer to the question yet and he is already drawing conclusions from his own cynicism about Government actions.

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: In fact, the record of the Government belies the sort of comments that the honourable member is making. This Government has undertaken a number of initiatives over the last few years in the interests of cyclists, the most recent of which is the passing of legislation in this place which will significantly improve the lot of cyclists on our roads. We are building cycle tracks around the metropolitan area and there are numerous other matters that have been taken into consideration in recent times.

I am aware of the scheme that the honourable member refers to, that Minister Mayes was talking about in the article to which he refers. Whether or not anyone from Mr Mayes' department has had discussions about this matter with the people from the Department of Road Transport, I have no idea. I certainly would not expect Ms Sydney Wood to discuss the matter with me and she certainly has not done so. Whether there are licences or other matters that require the attention of the Department of Road Transport under such a scheme I am also unaware. But, if there are, then they would be pursued in the usual way on an officer-to-officer basis and those decisions would be made.

As to the first question about whether Mr Mayes rode his bicycle to work on ride to work day, I cannot answer that. He does not answer to me or give me a copy of his weekly program so, I do not know whether he did or not. I understand that Minister Crafter participated in ride to work day and also in the ceremonies—

Members interjecting:

The PRESIDENT: Order! The Council come to order.

The Hon. BARBARA WIESE: —that were undertaken on that day. So, the Government was ably represented.

CHOCOLATE LIQUEURS

The Hon. CAROLYN PICKLES: My question is to the Minister of Consumer Affairs. I noticed today that there was a report in the paper regarding the sale of chocolate liqueurs in New Zealand. Apparently the police in New Zealand have decided that they cannot be sold unless they are sold from licensed premises. I find this an extraordinary situation. My question to the Minister is: is there any danger of delicatessens having to withdraw them, similar to the situation in New Zealand?

The Hon. ANNE LEVY: I was very surprised to see the report in the paper that in New Zealand certain police have decided that the alcohol content of chocolate liqueurs is such that they can only be sold from licensed premises and that consequently they could not be sold in the New Zealand equivalent of delicatessens and in fact could not be sold at all in certain parts of the city which are designated as dry areas. I was pleased to see that the Minister for Consumer Affairs in New Zealand made the comment that he thought a certain amount of commonsense should be used. I made inquiries from my department regarding the legal situation in South Australia and in case those who are addicted to chocolate liqueurs are concerned, I can assure all South Australians that chocolate liqueurs do not come into the category of alcoholic beverages.

Our liquor licensing laws are set up to deal with alcoholic beverages, so there is no danger whatsoever that chocolate liqueurs in South Australia will be limited in availability to licensed premises. All those addicted to these items from their local delis and elsewhere will be able to continue indulging their passion without fear of breaking the law in any way.

STATE BANK

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 the State Bank of South Australia.

Leave granted.

The Hon. L.H. DAVIS: Southstate Corporate Holdings Ltd is a fully owned subsidiary of the State Bank of South Australia. The State Bank's annual report for 1990-91 shows Southstate has almost 60 subsidiary companies. One subsidiary of Southstate Corporate Holdings is Ibis Information International Pty Ltd. Ibis supplies computer software, business information and strategic business consulting services. Its principal executive officer was Phillip Ruthven. Southstate purchased a 75 per cent share in Ibis in June 1989. In 1990-91 Ibis incurred a loss after tax and extraordinary items of $4.4 million. Ibis had creditors who have remained unpaid since at least 1990.

The 1990-91 annual accounts of This included a secured liability of $4.6 million due to Beneficial Finance, another subsidiary of the State Bank. Notwithstanding that liability and a deficiency in shareholders' funds of $3.8 million, the directors reported that Ibis was able to pay all its debts as and when they fell due because Southstate had resolved to support Ibis. In effect, the creditors of Ibis, which had the State Bank as its ultimate holding company, were assured that all moneys legitimately owing to them would and could be paid by Ibis or by Southstate. The directors' statement, signed by two directors who were also directors of Beneficial Finance, and the unqualified audit report on the accounts were dated 21 August 1991. On 16 October 1991 the chairman of This confirmed the accounts and reports, except in respect of an error described variously as 'technical' and 'of a minor nature'.

But just two weeks later, on 1 November 1991, Beneficial Finance withdrew its financial support of Ibis and demanded repayment of $4.2 million. In other words, the State Bank effectively pulled the plug. The shareholders were informed on 27 November 1991 that immediately upon that act by Beneficial the Ibis group had become 'technically insolvent' and that after the sale of certain assets the directors proposed to wind up the Ibis group. The directors of Ibis also advised

shareholders not to expect any return as Ibis would be unable to repay its creditors in full.

No announcement was made between 21 August 1991 and 27 November 1991 of any other matter or thing that might otherwise have raised concern about the accounts or their accuracy, nor was any statement made by Ibis or Southstate concerning the withdrawal of the support of Ibis by Southstate.

In early 1992 the creditors of Ibis were threatened by a letter from the State Bank's solicitor that, if they persisted in any legal action to recover moneys owing, Ibis would be liquidated. One creditor remained undaunted and obtained judgment against Ibis for an amount of over $156 000 in mid August 1992. The State Bank did not contest the claim, which had cost the creditor many thousands of dollars in legal expenses.

In sharp contrast, other major banks that I contacted said that creditors of banks' subsidiaries would not be put at risk. Even though there may not be a legal obligation, there is a moral obligation. This has been reflected in recent years in the case of several finance companies which are fully owned subsidiaries of banks. Although they reported losses, in some cases of tens of millions of dollars, creditors, including debenture holders, have always been paid. Ratings agencies also have an expectation that subsidiaries of banks will meet their financial obligations and, if they do not, the ratings of such banks could be affected. My questions are:

1. Does the Government support the State Bank's policies of not paying debts of its subsidiaries which are legally due, so forcing creditors to take expensive legal proceedings?

2. Does the Government support the tactic used by the State Bank of monstering creditors by threatening to wind up a company if they continue to pursue their legitimate claims for outstanding debts?

3. Does the Government support the State Bank's policy allowing a subsidiary which has agreed to support another subsidiary, thereby enabling the directors of that subsidiary to certify that it is solvent and so obtain an unqualified audit report, unilaterally and without notice to shareholders or creditors of that other subsidiary to withdraw that support in circumstances where the creditors of that subsidiary will not be paid in full the debts that are legally owing?

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

CHILD SAFETY

The Hon. PETER DUNN: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister of Labour Relations and Occupational Health and Safety, a question about child safety.

Leave granted.

The Hon. PETER DUNN: There is a discussion paper circulating throughout the State regarding child safety legislation. It has been fairly widely distributed, and there have been a few seminars around the State. However, there has been some negative reaction to those seminars. I notice in today's *Stock Journal:*

Mr Sutton said the SAFF would ensure submissions were heard by the Occupational Health and Safety Commission. He said the legislation documented in the discussion paper was impractical and the rural industry had to come up with ideas to head off the legislation.

'We have to show that we are taking steps to make our farms safer and increase awareness to all farmers about the need for safe farm work practices,' he said. Laura-based nursing director Jan Crawford agreed, saying the child safety document had many grey areas and was not written in the best interests of children of families involved.

I have seen the discussion paper, and it appears very restrictive. It has been pointed out to me that the farm is also the home and that if we compare statistics for homes in the city as well as in the country we find similar accidents. There have been many complaints from families that it is extremely restrictive, particularly because it will not allow mothers or fathers to leave the properties with the child in the care of one or other of the parents. My questions are:

1. Does the Minister believe that there are grey areas in the discussion paper?

2. Because of the effect being entirely in the country, will the Minister make extra time available for discussion?

3. Will the proposed changes to the Occupational Health, Safety and Welfare Act increase costs to primary producers?

The Hon. C.J. SUMNER: I will get a report and bring back a reply.

BARTON ROAD

The Hon. J.C. IRWIN: I seek leave to make an explanation before asking the Minister of Transport Development a question about the closure of Barton Road.

Leave granted.

The Hon. J.C. IRWIN: The saga to reopen Barton Road, North Adelaide, has been going on for some time—in fact, since it was closed to through traffic in 1985, except that STA buses have been allowed through since 1987. The Supreme Court ruled that the present arrangements were illegal in 1989 or 1990.

The council altered the physical arrangements to restrict the movement of vehicles at Mildred Road, Barton Road, Barton Terrace and Mills Terrace, North Adelaide, without first complying with the Roads (Opening and Closing) Act. It also installed eight 'No Entry' signs, the meaning of which does not have to be observed under section 76 of the Road Traffic Act. As well, if the Australian Standard AS1747 on traffic control signs was complied with, seven of those signs should have been 'No left turn' or 'No right turn'. This poses a further problem as those signs have no meaning because no appropriate regulations were made in 1984 when a new section 76 of the Road Traffic Act came into force. Again, they are not appropriate in such a situation as their use would be to prohibit traffic.

Mr Atkinson, the member for Spence, has spearheaded a lengthy campaign with some other people to open the road for traffic going to and from his general electorate area, despite the building of the bridge and ring route,

which undoubtedly has helped disperse traffic through and around the North Adelaide area.

The Surveyor-General has recently ruled that the road should not be closed and I understand that drivers use the road now, flouting a new closure which became 'law' last month. It is being suggested that the Adelaide City Council can use powers under the Local Government Act to keep the road closed to a particular class of vehicle but, as I said earlier, there are buses being allowed through there now. Section 888 of the Local Government Act exempts the Crown. State Government vehicles cannot be excluded and Commonwealth Government vehicles may also not be excluded which will only add to the confusion. My questions are:

1. Has the Minister had a meeting with the City of Adelaide regarding the reopening of Barton Road?

2. Has the City of Adelaide made a submission to the Minister containing the reasons for keeping Barton Road closed—a submission, I assume, would contain information about traffic flow management and traffic noise?

3. In the light of the recent Surveyor-General's report, will the Minister take action to have Barton Road reopened to all through traffic?

The Hon. BARBARA WIESE: As I understand the current situation the Adelaide City Council, having resolved some years ago to close Barton Road, using the wrong legislation and therefore bringing about the closure illegally, has since taken further legal advice following complaints that were raised by Mr Atkinson, on behalf of his constituents and numerous other parties, and has now carried a resolution of council to keep the road closed using the appropriate legislation.

I have recently received correspondence from Mr Atkinson on behalf of his constituents and also from the Hindmarsh council calling upon me to use whatever powers I have as Minister of Transport Development to cause the road to be opened. I have sought my own legal advice as to what powers reside with the Minister of Transport Development with respect to this matter. I am still waiting for that legal advice about whether or not there are powers under the Road Traffic Act that would allow me to take the sort of action that has been requested by Mr Atkinson and by the Hindmarsh council. I am hoping that the advice that I have sought will be forthcoming very shortly and I will then be in a position to make that judgment.

STATE BANK

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

Leave granted.

The Hon. J.F. STEFANI: I have been advised that on 31 October 1990 the Executive Committee of the State Bank considered the purchase of a PC based tool to improve the quality of the bank's credit analysis process. The credit project team strongly recommended the purchase of the equipment known as Turbo-Fast and Adviser, which was considered to form a fundamental building block upon which the bank could build an improved quality of credit analysis.

The media was advised by the Chief General Manager, Australian Banking that the new system would provide the base for financial analysis, standardising the processes for credit approvals. I am informed that the Executive Committee approved the purchase of the Turbo-Fast and Adviser units at a discount of $US34 125 and $US30 000, respectively. In view of the large amount of discount offered for advance payment for this equipment, my questions are:

1. How much did the Turbo-Fast equipment cost?

2. Will the Treasurer also advise the cost to purchase the Adviser equipment?

3. Will the Treasurer confirm the effectiveness or otherwise of these systems for the credit and financial analysis of the bank's corporate and commercial lending divisions?

The Hon. C.J. SUMNER: The honourable member seems to have an obsession in asking questions about the State Bank that go back two or three years. We have just gone through a fairly extensive process, costing some $30 million, for an Auditor-General's report and a royal commission report, etc. Allegations relating to the historical State Bank, I thought, were supposed to have been dealt with through the royal commission. However, we now have a situation where the honourable member seems to be asking questions which really do not relate to very much at all. They do not seem to relate to any improper activity. They may relate to whether or not the bank on those matters made the right decisions, but they go back two or three years.

The Hon. J.F. Stefani: I will bring you some current ones, if you like.

The Hon. C.J. SUMNER: Okay, current ones; go your hardest. Current ones we can look at and that is fair enough, but there does not seem much point in going back into history on matters such as this. There are matters in history that we have to go into. That is what has happened with the inquiries that have been set up—at great expense to the taxpayer. The reports are being produced and more reports are to come. I would have thought that the historical matters were matters that could have been dealt with through those processes. However, I will refer the question to the Treasurer and bring back a reply.

TREE PLANTING

In reply to **Hon. M.J. ELLIOTT** (25 March).

The Hon. ANNE LEVY: The Minister of Environment and Land Management has advised that the responsibility for managing the State's rural tree planting program rests with the Department of Primary Industries, therefore the following information has been provided through the office of the Minister of Primary Industries:

1. Unsuccessful applicants to Rural Tree Planting Grants were advised by letter from the Minister of Primary Industries in mid-March to contact their local departmental Revegetation Officer, who could assist them in still implementing their project using the resources of the State Tree Centre, or re-applying to the Federal Government's National Landcare Program which closed on 3 April 1993.

2. The $50 000 provided by the Rural Tree Planting Program is considered an appropriate level of funding given the availability of funds from other sources for community projects.

3. The Federal Government National Landcare Program provides $1.8 million for community projects in South Australia, of which $250000 is specifically directed to community revegetation projects.

A recent independent review of the program indicated that the level of funding from all sources met the needs of the community group activities. If funding levels and interest by groups change, the proportion of funds used for grants compared with the technical support to groups in the program, will be recognised.

HOUSING, PENSIONER

In reply to **Hon. J.C. BURDETT** (24 March).

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

1. No.

2. Every SAHT property has a 'full rent' level levied. Where a tenant is on a low income, a rebate is provided. In the metropolitan area, the rebate scale ranges from 19.5 per cent of income payable in rent for incomes of $100 per week or less to 25 per cent of incomes of $250 per week or greater, and in country locations, the scale ranges from 18.5 per cent of incomes payable in rent for incomes of $100 per week or less up to 25 per cent for incomes of $290 per week or more.

If a tenant's non-dependent children are living with the tenant then the following amounts are added to the weekly rent:

- Under 21 years old $5.
- 21 to 24 years old the greater of $5 or 5 per cent of income
- over 25 years old the greater of $5 or 5 per cent of income

HILLS FACE ZONE

In reply to **Hon. BERNICE PFITZNER** (24 November).

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

1. As the honourable member will now be aware, changes in the administration of planning controls in the hills face zone were gazetted on 17 December 1992 and came into effect on the 1 February this year.

2. The changes gazetted in December 1992 relate to the breakdown of administrative responsibility for dealing with development proposals between the South Australian Planning Commission and councils. While the regulation changes affect administrative responsibility, they do not in any way affect the policy rules applicable in the affected areas set down in the Development Plan.

The changes have transferred some responsibility for administration of development applications in the Hills Face Zone to the relevant council, in an effort to speed up decisions, avoid duplication, and free State resources for important strategic planning work, such as the MOSS work referred to in the question. These changes are different to regulation changes which were made on the 14 February 1991 and disallowed on the 10 April 1991.

Since disallowance of the former regulations an alternative approach was agreed with the Local Government Association and has been the subject of detailed consultation with councils and with relevant interest groups. There are two significant differences between these regulations and the previous regulations. Firstly, these regulations retain with the commission, the forms of major development of most concern to the broader community. The current proposal is to transfer to councils the forms of development that are of local importance. Secondly, those councils not wishing to accept the controls have been excluded, so that they have not been forced to accept new responsibilities (except for outbuildings and alterations to existing buildings). The regulation changes specifically refer to MOSS, in that reference to the Hills face zone in the regulations also includes reference to land zoned for MOSS purposes. This will ensure that the commission retains control over major developments in these areas after the MOSS concept is fully incorporated in the Development Plan.

The Minister wishes to reiterate that these changes will speed up decision-making on minor proposals, will avoid duplication between the commission and councils, have the support of local government, the Royal Australian Planning Institute and the Environmental Law Association, and do not threaten areas such as the hills face zone, as firm prohibitions on inappropriate development remain in place, and cannot be departed from by councils.

SPEED CAMERAS

In reply to **Hon. J.F. STEFANI** (23 March).

The Hon. C.J. SUMNER: The Minister of Emergency Services has provided the following information:

1. The 40 km/h limit introduced in a section of Unley is part of a trial coordinated by the Local Area Speed Limit Trial Working Party. The working party is chaired by Professor Taylor of the University of South Australia and involves Department of Road Transport, police, council and RAA representatives. The trial is being undertaken in cooperation with the Australian Road Research Board. A major element of the trial is the effectiveness of speed cameras in influencing compliance with the 40 km/h limit, and all enforcement is performed at the request of the working party.

2. On that part of Northgate Street within the 40 km/h zone there have been no fatalities, eight property damage accidents and two injury accidents in the three years from 1990.

3. In the period 1 July 1992 to 31 December 1992, 125 expiation notices were issued to motorists for exceeding the 40 km/h zone on Northgate Street, Unley Park.

COURT PENALTIES

In reply to **Hon. DIANA LAIDLAW** (31 March).

The Hon. C.J. SUMNER: The Office of Crime Statistics has extracted data on all cases sentenced under the parole legislation which came into effect on 20 December 1983. Under this legislation, non-parole periods were required to be set and remissions came off the non-parole period rather than the head sentence. Prior to that, non-parole periods did not have to be set and were not a good guide to the length of time to be served. Because they are not comparable to the sentences given since the parole legislation was changed, they have been excluded from

the figures here. The most recent cases included are those sentenced during the 1992 calendar year.

The data does not support the suggestion that rapes of males attract longer sentences than rapes of females; the reverse is true. The average is six months longer for rape of females. The longest sentence so far for rape was the case of *Sutton* (No. 44 of 1990 in the Supreme Court, sentenced 30 January 1992), who was given a 25 year non-parole period for five counts of rape committed while on parole. This was for the rape of a female. Prior to the case in question the longest non-parole period for rape of a male was 11 years and four months. Although 13 years is now the longest sentence for rape of a male, it is still well within the range given for rape of a female, being slightly over half the maximum for that category.

The data also does not support the suggestion that the recent sentence of 15 years with a non-parole period of 13 years for rape of a male was typical of a murder sentence, as the average for murder is 21 years and 10 months. Only 6 per cent of murder cases in the figures to the end of 1992 have sentences as long or less than 13 years.

I attach tables that summarise this information:

Table 1 Distribution of non-parole periods for cases with offence dates on or after 20 December 1983

	Up to 2 years	2-4 years	4-6 years	6-8 years	8-10 years	10-12 years	12-14 years	14-16 years	16-18 years	18-20 years	20 years or more
Rape of Male	0	9	2	0	0	1	0	0	0	0	0
Rape of Female	19	56	36	27	8	2	2	0	2	0	1
Murder	1	0	0	0	0	0	3	4	3	8	31

Table 2 Summary of non-parole periods for cases with offence dates on or after 20 December 1983

	Minimum	Maximum	Average	Median***	No. of Cases
Rape of Male	2 yrs to 6 mths	11 yrs 4 mths	4 yrs	3 yrs	12
Rape of Female	6 mths	25 yrs	4 yrs 6 mths	4 yrs	153
Murder	10 day**	33 yrs	21 yrs 10ths	22 yrs	50

* One additional case was deemed to be incapable of controlling his sexual instincts and sentenced to be detained until the Governor's pleasure be known

** This sentence was given in a much publicised case of a 'mercy killing' in which a man killed his severely mentally ill wife.

*** The median is the point at which half the figures are larger and half are smaller. It is less distorted than is the average by a few very large or very small numbers.

GRAND PRIX

In reply to **Hon. R.I. LUCAS** (31 March).

The Hon. C.J. SUMNER: The Minister of Tourism has provided the following response:

The Egan Zehnder and Cullen Egan Dell reports have not been 'doctored'. Rather, sensitive parts of commercial importance to the Australian Grand Prix Board have been deleted on the advice of Crown Law as they are considered to be 'commercially confidential' under the terms of the Freedom of Information Act.

In particular, salary ranges recommended in the reports have been deleted to protect negotiations of the board with individual managers on the appropriate salary packages. These reports were commissioned by the board for their own advice for negotiations of the appropriate salaries. They were not commissioned to provide individuals with the ranges within which they could negotiate. However, all salaries of managers are within the recommended ranges of the Cullen Egan Dell report.

In providing copies of the reports to Mr Lucas the board invited him to discuss the reports and answer any queries. This was declined by Mr Lucas through his office.

With respect to Dr Hemmerling's package, Mr Lucas has incorrectly included a board fee of $5 000 into the package. This fee is paid to the board not to Dr Hemmerling.

If the honourable member believes he has been wrongly denied access to information, formal review procedures exist under the Freedom of Information Act to challenge any decision. Rather than raising such matters in Parliament, it would be more appropriate to seek a review by the Chief Executive Officer of the agency or to take the matter to the Ombudsman or the District Court.

FREEDOM OF INFORMATION

In reply to **Hon. M.J. ELLIOTT** (9 March).

The Hon. C.J. SUMNER: The Minister of State Services has provided the following reponse:

The Office of Planning and Urban Development has received two requests under the Freedom of Information Act for documentation relating to the Craigburn Farm subdivision.

The first request from a member of the public was received on 29 January 1993. The application was for a copy of the report by the Department of Road Transport on the proposed subdivision of Craigburn Farm, a copy of ACOP's report to the Minister on the Craigburn Farm SDP and a copy of documents concerning discussions between the Minister and/or the Department and Minda Inc concerning the subdivision of Craigburn.

Whilst the first two parts of the request were quite specific and the documents easily identifiable, the third part of the request was not. The applicant was therefore contacted by telephone and asked to consider further defining the request as a considerable amount of documentation existed and it would be a time consuming and expensive exercise to satisfy the request as it stood.

The applicant subsequently modified that part of the application to any documents prepared subsequent to 1 January 1991.

A scan of the documentation collected to 10 February revealed that all but some three dockets were established prior to 1 January 1991 thereby only marginally reducing the considerable volume of documentation that would need to be assessed.

It was determined that the two reports sought were part of the documentation to be considered by Cabinet and Executive

Council and were therefore restricted documents under Schedule 1, Part I, 1 (1) (e) and (f) and 2 (1) (e) of the Act. The applicant was advised of this determination by letter dated 10 February but was also advised that the reports would be available for public perusal once Cabinet had decided the matter.

As to the third part of the application, because of the extent of the work still required to satisfy that request, the applicant was advised in the same letter that a $200 advance payment would be required prior to any further work being carried out to finalise the application. No response has been received from the applicant to this time.

In regard to the claim that the reports merely consist of factual or statistical material, that was not determined to be the case as the content of both reports are considered to have had an impact upon the decision making process and contain more than just factual and statistical information. However, in subsequent consultation with State Records, the administrators of the Act, the determination should also have stated that reports were also restricted under the internal working documents provision, Schedule 1, Part III, 9 (1), of the Act as they were prepared for the consideration of Cabinet and Executive Council and neither bodies at that time had received the reports.

The second request received from the Hon. Mike Elliott on 2 February 1993 made application under the Freedom of Information Act for 'any information held in relation to the proposed development at Craigburn Farm, including an SDP which is being considered'.

On 10 February 1993 a letter was forwarded from the Office of Planning and Urban Development which advised that, due to the considerable amount of documentation located, it was estimated that the free access provisions of the Act to members of Parliament, namely $350 or 11 hours work, would be exceeded, that is, a chargeable cost would be incurred and before further work is undertaken to satisfy the application consideration should be given to more clearly defining the request.

Although no documentation of the dates have been recorded, two telephone contacts were received by the Office of Planning and Urban Development requesting the title of some of the files so that the application could be more specific and a request was also made to inspect the files so that the required documents could be selected. The later request was denied on the grounds that to do so was in fact providing access to the documents.

No further contact has been made to date nor has the Office of Planning and Urban Development received a formal response to the letter of 10 February.

A further letter dated 17 March 1993 has since been forwarded by the Office of Planning and Urban Development advising that an advance payment is required within 14 days before further work to process the application is undertaken.

If the honourable member or any other person believes they have been wrongly denied access to information, review procedures exist under the Freedom of Information Act to challenge any decision. It would be more appropriate to seek a review by the Chief Executive Officer of the agency or to take the matter to the Ombudsman or the District Court as the Attorney-General advised. It would be inappropriate for the Minister responsible to review reasons for any particular denial of access when these formal review processes exist.

The success of Freedom of Information is unquestioned. There were over 1 200 requests in the first six months of the Act's operation of which 82 per cent resulted in full disclosure—the highest rate achieved by any State in Australia. In fact only 2 per cent of all requests went to formal review, again suggesting that the system is working extremely well.

While the number of requests made by politicians is not large (only 20 were submitted during the reporting period), there is no suggestion in the statistics that politicians are being treated in any way different to other members of the public.

PUBLIC AND CONSUMER AFFAIRS DEPARTMENT

The Hon. K.T. GRIFFIN: My questions are to the Attorney-General. Is the Government considering the abolition of the Department of Public and Consumer Affairs and the transfer of its functions to the new Department of Justice? If it is, can he indicate the rationale for such a proposition? Can he also indicate what other departments or functions of Government, apart from the Attorney-General, police and corrections, which we have already canvassed on an earlier occasion, are being considered for inclusion in the new super ministry.

The Hon. C.J. SUMNER: The Department of Public and Consumer Affairs or parts of it have obviously been considered when talking about the rationalisation of departments from 30 to 12. If it is decided to abolish the Department of Public and Consumer Affairs, where the various bits go as part of this process will have to be worked out. Obviously, one option would be to put its regulatory functions through the Office of Fair Trading; functions such as Public Trustee into the Attorney-General's Department; and the Office of Fair Trading could fit in with the Business Regulation Unit, which already exists in the Attorney-General's Department. However, no decisions have been made on those matters at this point. They have to be looked at over the next few weeks and, when decisions have been made, announcements will follow.

YOUNG OFFENDERS BILL

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

The Hon. K.T. GRIFFIN: Can the Attorney-General indicate at this stage what timetable is in mind for implementation of this legislation and also whether it is intended to bring it all into operation at the one time or to suspend parts; and, if it is to suspend parts, can he indicate what parts?

The Hon. C.J. SUMNER: It will be some time. I cannot give a date exactly because the Children's Protection (Young Offenders) Act has to be amended and the child protection aspects separated out into a separate Act. So, that will occur early in the budget session, but the passage of these Bills now will enable administrative procedures, etc., to be worked on for a start-up date later in the year. Depending on the passage of the Child Protection Act, in August, I assume, I would hope that

the scheme could be operating within a couple of months of that.

It would not be the intention to proclaim parts of the Act, but of course when you are looking through the detailed implementation of legislation sometimes there is a need to suspend the proclamation for a period of time, but that is not what is anticipated. It would only be if there were some special or unusual circumstances or unforseen problems that had arisen.

The Hon. K.T. GRIFFIN: I think this is the appropriate clause under which to raise the broader question to which I referred in the second reading about the other recommendations of the select committee. The Attorney-General did reply to say that the priority of the Government is to get the legislation in place; once this is done the Government will turn its attention to the other matters.

The sorts of things I raised during the second reading debate involved the assessment of the recommendations of the select committee; whether that was being coordinated centrally; if it was to be coordinated centrally, by whom was that to be coordinated; whether there were any target dates for assessment of the recommendations; whether there is a Minister with the responsibility for doing that; and the issue of resources for the various initiatives which the select committee recommended. Would the Attorney-General amplify his rather abbreviated remarks at the second reading stage and address some of those issues about the other recommendations of the select committee?

The Hon. C.J. SUMNER: I will answer those questions in general terms, because a lot of them relate to crime prevention initiatives which the Government has been pursuing vigorously, in any event, for the past three or four years. Obviously, we will have to set in place a process to deal with the other recommendations once this legislation is through—at least the framework for the future will be established—and we will have to work on getting the administrative arrangements in place.

At the same time we will look at the other recommendations of the select committee. I will arrange for those to be considered by the Justice and Consumer Affairs Committee of Cabinet, and then we will have to look, obviously, at resource issues, issues of principle, etc. But the question the honourable member asks is a reasonable one. We will set up a process for reviewing those other recommendations under the auspices of the Justice and Consumer Affairs Committee.

The Hon. K.T. GRIFFIN: Does that mean that the Attorney-General will have the responsibility for driving the process of examining the other recommendations and determining whether or not they will be accepted by Government; if they are, then what are the processes for implementation?

The Hon. C.J. SUMNER: They are cross-agency recommendations, and normally when that occurs, as occurred with the recommendations of the Royal Commission into Aboriginal Deaths in Custody, the monitoring and oversight is carried out by the Justice and Consumer Affairs Committee, with individual Ministers being responsible for dealing with those recommendations which fall within their own portfolios.

The Hon. K.T. GRIFFIN: So, that means that although the Justice and Consumer Affairs Committee of Cabinet has some responsibility ultimately it will be up to the various departments and the individual Ministers to assess the recommendations which are pertinent to their responsibilities, with a view to determining budget priorities and whether or not recommendations should be made for implementation and the program?

The Hon. C.J. SUMNER: Individual departments will do that work, but, as I said, it will be oversighted by the Justice and Consumer Affairs Committee, which will look at the proposals that come up from the departments, assess priorities and decide whether matters should go to Cabinet.

The Hon. K.T. GRIFFIN: I take it then that there is no timetable yet for that, and that that is something that may be this year or may be next year.

The Hon. C.J. SUMNER: The process of reviewing the recommendations will start soon through Justice and Consumer Affairs. First of all, the Government will have to determine whether it accepts all the recommendations; then it will have to determine which of those can be implemented without any additional resources; then it will involve those which can be implemented and which may have additional resource implications but can be done within current budgetary implications; and then we will have to look at those that may need additional funding.

The process will start soon. The time at which the recommendations will be implemented will depend on those factors. However, the process will be set up as soon as it can under JACA. As I said, a lot of them do relate to preventive measures, and a lot of that work is already being done within Government.

Clause passed.

Clause 3 passed.

Clause 4—'Interpretation.'

The Hon. K.T. GRIFFIN: This clause relates to definitions, one of which is as follows:

> 'offence to which this Act applies' means any offence alleged to have been committed by a youth except an offence excluded by regulation;

Can the Attorney-General indicate whether he has any offences in mind which might be excluded by regulation and, if so, can he give some indication of what they might be?

The Hon. C.J. SUMNER: This has not yet been worked out, but I am advised that it would probably apply to traffic infringement notices and the sort of offence which would be excluded and then be able to be dealt with through the normal traffic infringement notice system.

The Hon. K.T. GRIFFIN: If they are excluded, does that mean that if an expiation notice is not paid the offence is then dealt with in the adult court because of the way in which that definition is structured?

The Hon. C.J. Sumner: Yes.

The Hon. K.T. GRIFFIN: Another definition is that of 'minor offence', and I did reflect upon that when I spoke at the second reading stage. I made the observation that it is vague and essentially it is a matter of discretion for police officers. The Attorney-General did reply at the second reading stage, acknowledging that it is vague but also making the point—which I accept—that it is difficult to come up with a satisfactory definition of 'minor

offence'. He said, 'The definition in the Bill sets the parameters, and police guidelines will flesh these out.'

The Attorney-General did make available to me the draft police guidelines. I have only had a limited time to look at them, but it seems that a 'minor offence' will be a so-called victimless offence. Page 3 of the draft guidelines gives examples of language, behavior offences, breaches of liquor licensing or lottery and gaming Acts, and road traffic and motor vehicle offences as prescribed. It then goes on to deal with the process of cautioning and, at the end, identifies a screening guide where a series of points is proposed in relation to the offender, the offence, the victim and the public interest.

For example, there is one point for a person under 14 years; and two points for an offender between 14 years and under 17 years. I am not quite sure what happens to the 17 year old; it may be that this was drafted before the final age of 18 years was determined. For a first offence there is one point, and one point is added for each previous offence. If the offence is victimless, the possession of cannabis attracts one point if it is minor, two points if it is medium and three points if it is serious. If it is a traffic offence, for no disqualification there is one point and for disqualification there are two points. If the victim requests a family group conference five points are added; if the victim requests police action deduct two points. In relation to public interest, refusal to apologise or make reparation for loss or damage caused carries seven points; likely to reoffend five points; and will not respond to informal action five points.

So there is a whole series, and it appears that if 10 points are accumulated it is to be regarded as a matter for referral to the family group conference and under that for a formal caution. Is that still the Government's intention as to the way by which offences might be categorised for the purpose of on-the-beat police attempting to determine what is a minor case and what is not a minor case? Is any further attention expected to be given to the development of that model or other models which might provide clearer guidance for police officers? Can the Attorney indicate whether my understanding of it is correct and, secondly, reply to those latter questions.

The Hon. C.J. SUMNER: These are draft guidelines which were given to the honourable member; they are still being worked on by the Police Department. I guess the final ones can be made public. I do not think I can take the matter any further beyond saying that this is what they currently have in mind. If the honourable member has any suggestions, I am sure they would be interested in hearing from him.

The Hon. K.T. Griffin: Am I correct in my understanding about the way in which they are proposing to define it?

The Hon. C.J. SUMNER: Yes, but it is not final just yet.

The Hon. I. GILFILLAN: I find the definition of 'minor offence' a little confusing because of the requirement for it to be dealt with as a minor offence as set out in paragraphs (a), (b), (c) and (d). That already presumes that judgments of a subjective kind—the character of the offender, the probability of reoffending and the attitude of parents and guardians—would need to have been adjudged by the police officer prior to its being determined a minor offence. Yet clause 6 (which we will be dealing with in a minute) refers to a youth admitting 'the commission of a minor offence' and then goes on with other qualifications. I make the observation that it is somewhat confusing that a police officer is to make a judgment of its being a minor offence before the officer has had a chance to gauge in any depth paragraphs (b), (c) and (d) of the definition of 'minor offence'.

Clause passed.

Clause 5 passed.

Clause 6—'Informal cautions.'

The Hon. K.T. GRIFFIN: At the second reading stage I indicated that whilst there was a concern about the way in which cautions may be administered, whether informally or formally, the Liberal Party was prepared to allow the system to be put into operation and, provided that there was conscientious monitoring of the way in which cautions were administered, we would be reasonably satisfied. However, we express the view that where one leaves to a police officer the responsibility for both detecting as well as apprehending an offender and then acting as the judge, there is immediately a conflict.

It is important to ensure that that conflict does not prejudice the young offender. On the other hand, I made the point which has been drawn to the attention of the Liberal Party by a number of people that it is all very well to have informal cautions but, if a number of informal cautions are given to a young person, how is one to know whether or not there has been one or 10 informal cautions before the formal cautioning process ought to commence? The Attorney-General did indicate in his reply that it was envisaged that the police log books and note books would be an informal record, and I see from the draft general orders that it is intended that the police will note the informal caution, and they may be a reference source for the future in determining on other occasions whether more formal proceedings should be pursued.

On that basis, it seemed to the Liberal Party that we ought to provide for some record of informal cautions. We do not want them to be accessible for any other purpose than determining whether a young person has had one informal caution or, for example, 10 informal cautions, keeping in mind that young people are mobile, police do not necessarily know all the young people in an area, and that police are posted from area to area over a period of time. With a country police officer, it is more likely that that officer will know the young people in their district. Informal cautions go back to the time when a police officer knew his or her area and was able to twist the ear or take the child home with a very stern warning, and most frequently that was the last time that that young person ever crossed the path of the police officer. So, the system informally had some good points.

Now we have a much larger population with police officers not necessarily knowing all the young people in the area, and we felt that some form of informal caution should be kept. So, my amendment seeks to allow records of informal cautions to be kept, not to make it compulsory, but only for the purpose of making possible informed consideration of the appropriate action to be taken in the event of the commission of a subsequent offence by the youth. We think it is framed in terms

which will not prejudice the young person. We recognise the fact that, like all records, they could be misused but, in the context of this Bill, we think that is unlikely to occur where the focus is placed upon more informality than formality, at least in the early stages of a young person's contact with the police. Therefore, I move:

Page 4, line 10—Leave out subclause (3) and insert:

(3) Records of informal cautions may be kept but only for the purpose of making possible informed consideration of the appropriate action to be taken in the event of the commission of a subsequent offence by the youth.

The Hon. C.J. SUMNER: The Government opposes this amendment. If informal cautions are to be formally recorded, as suggested here, then they will inevitably become formal cautions. This defeats their purpose. Police currently maintain some records on informal cautioning for intelligence gathering purposes. It therefore seems unnecessary to make this a legislative requirement. The amendment is also ambiguous. It fails to specify who is to keep these records and for what purposes they will be used. The amendment states that they should be used 'for the purpose of making possible informed consideration of the appropriate action to be taken in the event of the commission of a subsequent offence by the youth.' Informed consideration for what and by whom?

The Hon. I. GILFILLAN: Clause 6 (3) provides specifically that no official record is to be kept of an informal caution. That encapsulates the intention and character of informal cautions. The amendment contradicts that and is therefore opposed by the Democrats.

The Hon. K.T. GRIFFIN: With respect to most of these amendments, if I lose on the voices I do not intend to divide, in view of the fact that our views will be clearly on the record and that divisions take time during the course of what we hope is the last sitting day of the Parliament. At least the issues will be thoroughly canvassed. My view is that there is sufficient clarity in the amendment, and quite obviously the records will be kept by the police because they are the ones who exercise the caution.

Amendment negatived; clause passed.

Clause 7—'More formal proceedings.'

The Hon. K.T. GRIFFIN: Before I deal with the amendment, I will deal with an issue that applies to the previous clause as well as to this one, but more importantly to this one because it is the police officers who will actually be administering cautions and handing out punishment. The Attorney-General gave some information during the second reading debate that there would be some officers specifically identified as the cautioning officers, and the draft general orders are specifically referred to. However, I could see no indication as to the sort of training or the period of service before which an officer might be allocated the responsibility of cautioning. Could the Attorney-General give the Committee some further information about the selection process, and the rank or other qualifications of the officers who might be ultimately responsible for administering the cautioning process?

The Hon. C.J. SUMNER: That matter was debated at length in the select committee, I understand, between those who wanted a separate group of police officers specifically designated to deal with young people, and those who felt it was best left to the Police Force at large. There are no restrictions in the Bill as to who can exercise the power. It can be exercised by any police officer.

A draft instruction training manual is being prepared and we can supply that to the honourable member if he would like it, either now or later. That will set out procedures that are to be followed by the police in administering the cautions.

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

Page 4, after line 29—Insert:

(2a) An explanation given to a youth for the signing of an admission by a youth under subsection (2) should take place in the presence of—

(a) a guardian of the youth; or

(b) if a guardian is not available—an adult person nominated by the youth who has had a close association with the youth or has been counselling, advising or aiding the youth.

In the more formal cautioning process, if the youth admits the offence and the officer proceeds to deal with the offence by way of imposing a sanction through the formal cautioning process, the officer is required to give explanations to the youth about the nature of the offence, the right of the youth to obtain legal advice and the right of the youth to require the matter to be dealt with by the Youth Court. If the youth does not require the matter to be dealt with by the court then the officer should seek to have the youth sign the form of admission, if at all possible. The officer then may proceed to require the youth to do a number of things: enter into an undertaking, carry out a specified period of community service or anything else that might be appropriate. That undertaking is to be signed, if possible, by the young offender's parents or guardians. Before requiring the youth to enter an undertaking the police officer must take all reasonable steps to give the guardians an opportunity to make representations with respect to the matter.

The view that the Liberal Party has is that the parents or guardians ought to be involved at a much earlier stage than the signing of the undertaking, having in mind that the officer should put an admission by the youth into writing, and that is a prerequisite to then moving onto the next step. We say that it should be put beyond doubt that an explanation should be given to the youth or the signing of an admission should take place in the presence of a guardian, or if a guardian is not available then an adult person nominated by the youth who has had a close association with the youth or has been counselling, advising or aiding the youth. We believe that that is an appropriate safeguard which then leads onto the next stage of requiring the undertaking to be signed. It is our view that that will not create unreasonable or unnecessary burdens to police in administering the more formal process of cautioning, particularly remembering that the police officer is, in effect, subsequently going to be acting as though he or she were a judge, and handing out an appropriate penalty.

The Hon. C.J. SUMNER: The Government opposes the amendment. The Bill allows for the youth's guardian to be present during the administration of the caution and to make representations in relation to any undertaking. The Government believes that these provide adequate

protection for the young person during the cautioning process. So, the guardian or parent is there during the cautioning process under the Bill as drafted.

The Hon. K.T. Griffin: Is that a formal caution or—

The Hon. C.J. SUMNER: If it is not a formal caution, obviously the parents can be there, but we think it would be overly bureaucratic for parents and guardians to be required to be there at that earlier stage when the officer is telling the youth that he has committed an offence.

The Hon. K.T. GRIFFIN: When the officer is telling the youth that he or she has committed an offence it then moves from there, and certainly the police officer is informing the youth that the youth is entitled to obtain legal advice. It may be that the admission is then made and subsequently the formal caution against further offending is administered. The formal caution depends upon the admission. It may be that that occurs a few days prior. One really does have to question whether in all cases that admission will be made voluntarily and truthfully, or is merely designed to avoid further trouble. I have a concern that parents or guardians are not involved at that stage, or as early as possible, rather than being left to the more formal process of the caution once the preliminaries have all been dealt with.

The Hon. I. GILFILLAN: I am not absolutely clear where this will actually come into play, but it appears to me that the Hon. Mr Griffin is seeking to have the guardian, parent or an adult person nominated in company as soon as the proceedings move from the informal caution aspect into what is described as more formal proceedings.

I believe that there are advantages in having that companionship present reasonably early in the processes. I would prefer it to be in an amendment which reads: 'An explanation given to a youth or the signing of an admission by youth under subsection (2) should take place, if practicable...'. I do not share with the Hon. Trevor Griffin the desire to take out 'if practicable' because I think it then becomes too onerous. One can imagine that there are quite often circumstances in which it is unnecessarily difficult to get a guardian or adult person or parent there. I would ask him to consider moving it in the amended form. Maybe I heard the Attorney's answer without a clear understanding but I thought it meant that the current draft of the Bill, in his opinion, allows for—if it does not necessarily require—a guardian or adult person or parent to be there virtually right from the start.

The Hon. C.J. SUMNER: Yes, it does.

The Hon. K.T. GRIFFIN: It is correct that this does not prevent the parent being present, but it does not place a responsibility on the police to endeavour to ensure that that happens. It is not a mandatory obligation. I have always regarded 'should' as discretionary whereas 'shall' is mandatory. What I am anxious to do is to get the parents and guardians involved at the earliest opportunity. If a parent receives a call from the police station to say, 'Your son has been picked up' or 'Your daughter has been picked up' and the young person has already been put through the initial process, then I have some concern about that. I take it from what the Hon. Mr Gilfillan said that if I remove the words 'if practicable' he will not support the amendment. He acknowledges that that is the case. In the light of that intimation, although I think my amendment does give discretion, I seek leave to move it in that amended form so that it 'should take place, if practicable, in the presence of'.

Leave granted.

The Hon. K.T. GRIFFIN: My amendment therefore reads:

(2a) an explanation given to a youth for the signing of an admission by a youth under subsection (2) should take place, if practicable, in the presence of—

(a) a guardian of the youth; or

(b) if a guardian is not available—an adult person nominated by the youth who has had a close association with the youth or has been counselling, advising or aiding the youth.

Amendment carried; clause as amended passed.

Clause 8—'Powers of police officer.'

The Hon. I. GILFILLAN: I move:

Page 5, lines 8 to 16—Leave out all words in these lines after 'offending an' and insert ', if the officer considers it appropriate in the particular case, require the youth to apologise to the victim of the offence.'

As I indicated yesterday, my amendment is specifically aimed at taking out what I believe are the inappropriate powers which are given to a police officer in this clause. I recognise the significance and value of a formal caution and I do not intend to say any more about that. I do not believe that the effectiveness of the formal caution is diminished, in its essence, by taking from the police officer the power to require a youth to pay compensation, to carry out a specified period of community service—up to 75 hours—or, as is the phrase used in paragraph (c), 'or to do anything else that may be appropriate in the circumstances of the case.' I have no problem with an undertaking to apologise to the victim of the offence if that is part of a formal caution.

I canvassed the argument in my second reading debate contribution, and I do not intend to repeat it; suffice it to say that I think it is a totally uncharacteristic and improper power for a police officer to have. As the Attorney confirmed earlier, whatever the wishes may be in the Police Department's instruction, the Bill, which is what we must always turn back to, does not define that any particular police officer, with particular qualifications, would be the person to do this. It could be any particular police officer who has been commissioned. So I move my amendment on the basis that I believe it is totally inappropriate and counter to the whole image and intention of a police officer's task to be required to, in effect, be the sentencing judge and to set compensation to the victim of an offence.

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

Page 5, line 15—Insert 'lawful and' after 'may be'.

This is for clarification. I have no doubt that the police will require only lawful action to be taken. I was seeking to insert 'out of an excess of caution', but it is not a major issue. It was raised with me as a matter of some uncertainty, and that is why it is there. I have other amendments with which I can deal later. In relation to what the Hon. Mr Gilfillan has indicated, I have already expressed unease about the formal cautioning process followed by the imposition of penalties which in normal circumstances would be imposed upon persons only

through the court process. I have taken some consolation from the fact that if the condition imposed on the young offender is not complied with, it can go to a family group conference or, as the Bill is drafted, to the court. Therefore, there are ultimate safeguards.

My concern, which I have previously expressed, is that young people may be persuaded to submit to this course for fear of what might happen if it is taken further, even though they may dispute the facts. It is a fact of life that not only young people but adults are intimidated by the prospect of having to go to court and appear in front of people, even in cases where they assert that they are not guilty. I am uneasy about it. There are those in the Liberal Party who do not share the same unease, but there are varying levels of concern about it. Therefore, we have said that we will go along with the general thrust of the Bill. As I said earlier, we will examine what comes out of the operation of this procedure in the first year or so and, if there are injustices, we will do everything we can to ensure they are remedied. On the basis of what the Hon. Mr Gilfillan has said and in the light of the comments I have just made, our inclination is not to support the amendment, but to view this as a comprehensive and coherent scheme which will need to be monitored closely.

The Hon. C.J. SUMNER: The Government opposes both amendments. The Hon. Mr Gilfillan's proposal for the imposition of requirements on juveniles by the police was one of the matters that was central to the select committee's recommendations and safeguards were built in. Undertakings required by the police of a young person must have the full agreement of the young person; the police must have regard to sentences imposed for comparable offences by the Youth Court; and there are other safeguards. Because it was central to the select committee's consideration of the matter, the Government opposes that amendment. The Government also opposes the Hon. Mr Griffin's amendment because it is unnecessary. We assume that the police would not require undertakings that were unlawful. If they did, obviously they would soon be in trouble.

The Hon. I. GILFILLAN: Subclause (3), relating to the powers of a police officer, provides:

> Before requiring a youth to enter an undertaking under this section, the police officer must take all reasonable steps to give the guardians of the youth an opportunity to make representations with respect to the matter.

Then subclause (4) provides:

> In exercising powers under this section, the police officer must—
>
> (a) have regard to sentences imposed for comparable offences by the court; and
>
> (b) have regard to any guidelines on the subject issued by the Commissioner of Police.

This is a court by any other name. The police officer is going to preside over a quasi-court. It will be his or her determination what sort of evidence will be accepted, his or her obligation to make sure that certain people will have the opportunity to make representations, then weigh the pros and cons of the representations and impose the sentence.

In the next clause, I think it is, we have the family conference, which is the ideal venue with a particularly prepared person, the youth coordinator, in place. It is better structured and it has the capacity to impose these penalties. It is in the family conferences where the substantial advantages of the community dealing with a young offender will lie. The police do not want this. It will take a lot more time and involve more worrying responsibility. I think it is a fatuous and very dangerous clause to have in the Bill. It damages the potential for the formal cautions to be useful and it threatens the structure of the justice system in our community.

I am very disappointed that two people whose opinions on matters of law I respect so highly, the Attorney-General and the shadow Attorney-General, are prepared to sit by. I do not think they have much enthusiasm for it, and I hope that is not being unfair. I think that they both have misgivings about the procedure, and it should be thrown out. My amendment will improve the efficiency of the Bill and encourage police officers to take a more favourable view of the formal caution. Many police officers would be daunted by this procedure, because there are very few who are highly trained. They will become quasi-youth justice coordinators by a different name. It is illogical. I am very disappointed that the Opposition and the Government are prepared to go on with this ridiculous proposal. I forecast that they will come to rue the day.

The Hon. K.T. GRIFFIN: I have already expressed some unease about the scheme. The select committee took the view—and we are prepared to go along with it for the moment—that this coherent system, progressing from informal cautions to formal cautions, to family group conferences and then to the court, ought to be given a try. Some people may not want to compare South Australia with Singapore, but in many areas they have something to teach us. In Singapore, discussions with the Attorney-General and the Solicitor-General a couple of years ago indicated that their young offenders legislation did not have screening and aid panels, but it allowed discretion to the police about cautioning and whether or not to take a matter to the court.

As I recollect it it did allow those police who were making an assessment of that intermediate stage between informal cautions and going to court to require some action to be taken by the young offender really as a condition to not taking the matter further.

The point that I have made, on behalf of the Liberal Party, is that whilst there are misgivings about this part of the scheme we will allow it to pass and we will keep it under very close scrutiny in the implementation phase. If there are difficulties with it we will be the first to seek significant changes.

The Committee divided on the Hon. I. Gilfillan's amendment:

> Ayes (2)—The Hons M.J.Elliott, I. Gilfillan (teller).
> Noes (18)—The Hons J.C. Burdett, T. Crothers, L.H. Davis, Peter Dunn, M.S. Feleppa, K.T. Griffin, J.C. Irwin, Diana Laidlaw, Anne Levy, R.I. Lucas, Carolyn Pickles, R.J. Ritson, R.R. Roberts, T.G. Roberts, J.F. Stefani, C.J. Sumner (teller), G. Weatherill, Barbara Wiese.
>
> Majority of 16 for the Noes.

Amendment thus negatived; the Hon. K.T. Griffin's amendment negatived.

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

Page 5, line 22—Leave out ', if practicable,'.

I have formally moved this but the Hon. Mr Gilfillan has indicated he is not prepared to support it. I am seeking to provide that the caution must be administered in the presence of a guardian of the youth, or if the guardian is not available an adult person who has had a close association with the youth.

I deal with the situation where a guardian is not available and the youth refuses to nominate someone else, but that may not be necessary if I lose my amendment. But, as I say, I intend to persist with the amendment.

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

Amendment negatived.

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

Page 5, after line 33—Insert:

(4a) If a youth enters into an undertaking under this section to apologise to the victim of the offence, the apology must be made in the presence of an adult person approved by a police officer.

I was concerned to ensure that the young offender was accompanied to the victim and made the apology in the presence of an adult person. Some persons have expressed concern that the victim may be intimidated by the young offender without a suitable adult being present. It may be the guardians of the child; it may be someone else. But what I seek to do is to ensure that that apology is made in the presence of an adult person—approved by a police officer in this instance.

Later I deal with it in the context of the family group conference, by requiring either the conference or the youth justice coordinator to determine the person in whose presence that apology is given. I think there is a protection for the victim and I think, too, there is a certain benefit for the young offender, where the young offender knows that he or she must at least appear to make a genuine apology and must do it sensitively and responsibly rather than just doing it in isolation.

The Hon. C.J. SUMNER: I accept the amendment.

Amendment carried.

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

Page 6, line 8—Insert 'if the youth requires the matter to be dealt with by the Court—' before 'lay'.

This is still dealing with formal cautions. Subclause (6) provides that if a youth does not comply with a requirement of a police officer then the officer or some other police officer has two options: refer the matter to a youth justice coordinator so that a family conference may be convened, or a charge for the offence may be laid before the court.

My view is that there ought to be a progression and that, if there is a failure to comply with the requirement of a police officer, the next step up ought to be the family group conference. The police ought not to have the option of saying, 'Well, it goes to one or the other.' There may be circumstances where the police officer says, 'Well, I am going to refer it straight to the court,' when in fact the justice of the situation might require that it go to the youth justice coordinator for a family conference.

I acknowledge that the court has the power to refer it back to a family conference if the police officer makes the decision to send it direct to the court. My preference is to maintain that progression, and my amendment is to ensure that, if a youth does not comply with the requirement, the matter is referred to a youth justice coordinator, although if the youth requires the matter to be dealt with by the court a charge must be laid and the offence must then go before the Youth Court.

The Hon. C.J. SUMNER: The Government opposes this amendment. The Government believes that the police officer should determine whether to impose the caution, go to the family group conference or go to court, subject of course to the overriding right of a juvenile or child to decide to have the matter referred to court if they do not admit the offence. The honourable member's proposal cuts across that principle.

The Hon. I. GILFILLAN: I am inclined to support the amendment, but I am also concerned that the young offender does not have the option to choose a family conference in spite of the police officer's determination. I am uneasy that this is a situation where a young offender has been judged by a police officer to be acceptable for a formal caution and apparently has not complied with the requirement of the police officer. So, it seems to me that it may be an act of pique that the police officer could say, arbitrarily, 'You might think you're going to a family conference, but you're not; you're off to court.'

Where the juvenile offender has asked to go to court, then both the Bill as it is drafted (because of the clause in the parenthesis) and the amendment virtually mean that there is an overriding determination, if the young offender says, 'I want to go to court,' that he or she goes to court; there are no ifs or buts about it. But I am uneasy if the young offender says, 'I would like to have the opportunity for a family conference,' and the police officer who is in charge of that situation can say, 'No'. That is my interpretation.

The Hon. K.T. GRIFFIN: As I understand it, that is correct. With the formal caution under clause 7, if there is an admission then the youth may seek to have the matter referred to the court, and in that event the charge should be laid. Otherwise, the police officer makes the decision whether there should be a family conference or a formal police caution.

I understand the concern that the Hon. Mr Gilfillan raises. I would have thought that if the young person did say, 'Well, I would prefer to go to a family conference,' that would certainly be taken into consideration, but the court has the ultimate say if it gets to the court. I guess what I am really focusing on at the moment with my amendment is that situation where there is a breach of a requirement by a police officer.

The Hon. I. Gilfillan interjecting:

The Hon. K.T. GRIFFIN: Again, if there is a failure to comply with a requirement, and if the young offender says, 'I want to go to the court,' it has to go to the court. Here, if the young offender does not say, 'I would like it to be dealt with this way or that way,' the police officer has a choice. However, I am saying that it really ought to go straight up to the youth justice coordinator for the purpose of arranging a family conference. It seems to me that that is a natural progression where there is a failure to comply with a requirement and that it is not always necessary to give the police officer, if it is at all necessary, a choice. So, I still take the view that

there ought not be the choice in the police officer; that it ought to be straight—

The Hon. I. Gilfillan: I do not understand the difference that your amendment would have over what is in the Bill.

The Hon. K.T. GRIFFIN: My amendment removes the choice of the police officer. As I understand it, if there is a failure to comply with a requirement of a police officer the police officer may (under subclause (6)) refer the matter to a youth justice coordinator or lay a charge; but, if the youth requires the matter to be dealt with by the court, a charge must be laid.

The Hon. I. Gilfillan: That seems to me to be the same as your amendment.

The Hon. K.T. GRIFFIN: I do not think it is. What I am saying is that if there is a failure to comply the police officer does not have a choice: it goes to the youth justice coordinator. That is the natural progression. But if the young person says, 'I want to go straight to court and get it resolved once and for all,' it can go straight to the court. If the young offender does not say that then the next step is up to the youth justice coordinator.

The Hon. I. GILFILLAN: I do not understand the significance of it. If one was to remove 'or' from paragraph (a) I could understand the logic of what the Hon. Trevor Griffin tells me he is trying to do. It seems to me that his amendment and the provision in the Bill are identical. The first option for the police officer, if the youth does not comply with the requirement, is for him to say, 'I will refer it to the youth justice coordinator so that a family conference may be convened to deal with the offence'; the second option is that he can institute a proceeding to lay a charge for the offence before the Crown—and that is an unfettered choice; and the third option, if the youth requires the matter to be dealt with in a court, is that a charge must be laid—and there is no option there. The Hon. Mr Griffin's amendment provides that if the youth requires the matter to be dealt with by the court the police officer must lay a charge for the offence before the court, so it is identical.

The Hon. K.T. GRIFFIN: They are not identical because at the moment the Bill will allow a police officer, where there is a young offender who has not complied with a requirement—

The Hon. I. GILFILLAN: In fairness to the Hon. Trevor Griffin, having recognised the point I think I ought to put it clearly on the record. What he rightly points out is that his amendment would restrict the police officer's option for laying a charge before the court only to the occasion where the youth requires it. In that case it is quite a substantial improvement and I indicate support for the amendment.

Amendment carried.

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

Page 6, line 9—Leave out all words in this line.

This amendment is consequential.

Amendment carried.

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

Page 6, lines 16 to 18—Leave out subclause (8) and insert:

(8) If a police officer deals with an offence under this Division, the officer must—

(a) ask the victim of the offence whether he or she wishes to be informed of the identity of the offender and how the offence has been dealt with; and

(b) if the victim indicates that he or she does wish to have that information—give the victim that information.

Subclause (8) provides:

If a police officer deals with an offence under this Division, the officer must, at the request of the victim of the offence, inform the victim of the identity of the offender and how the offence has been dealt with under this section.

What my amendment seeks to do is to put the issue right up front so that if a police officer deals with an offence it is not a question of waiting for the victim to ask for information: the officer must ask the victim whether he or she wishes to be informed of the identity of the offender and how the offence is being dealt with. If the victim does indicate that he or she wishes to have that information then that information is to be given to the victim.

If that is done right at the beginning when the investigations are being conducted it can be noted on the police file and, with modern computerisation, presumably that will be flagged when the resolution of the court matter has been accomplished and it will become an automatic process. It will remove some of the bureaucracy and it will also mean that the victim, who will not necessarily know that he or she has this right, will actually have it drawn to his or her attention and, if he or she wants the information, it is on the record and then when the matter is resolved it can be made available. I think that that improves the operation of this clause and I seek the support of the Committee for it.

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

Amendment carried.

The Hon. I. GILFILLAN: I have a concern which I intended to raise on clause 7, but the Hon. Trevor Griffin did not move to insert new subclause (2a). It appeared to me that it could be restrictive on a youth who has nominated a person and that person is not available (which may well be the case), and it did not appear to give the option for having two or more persons nominated who could be contacted to eventually get one who could attend. I wanted to look at the significance of this in other parts of the Bill. It does concern me that, where a young offender is confronted with the situation of having an adult person as a companion, he or she has the opportunity to have more than one person contacted before it is assumed that the young offender will not have a companion with him or her. I wanted to make that point on this clause before proceeding. I indicate to the Committee that I may be seeking recommittal on that point. Members may wish to comment on it now or at some later stage.

Clause as amended passed.

Clause 9—'Youth justice coordinators.'

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

Substitute the following clause for clause 9:

9.(1) The following are to be Youth Justice Coordinators:

(a) the magistrates who are members of the Youth Court's principal or ancillary judiciary; and

(b) the persons who are appointed by the Minister as Youth Justice Coordinators.

(2) A person appointed as a Youth Justice Coordinator will be appointed for a term not exceeding threee years specified in the instrument of appointment and is, on the expiration of a term of appointment, eligible for re-appointment.

(3) A person cannot be appointed as a Youth Justice Coordinator unless the Senior Judge of the Youth Court has been consulted in relation to the proposed appointment.

(4) A person appointed as a Youth Justice Coordinator is responsible to the Senior Judge of the Youth Court (through any properly constituted administrative superior) for the proper and efficient discharge of his or her duties.

This clause means that all magistrates will automatically be youth justice coordinators. This will ensure greater flexibility especially in country areas where, in the absence of independent coordinators, magistrates can be used to coordinate the conference.

The Hon. K.T. GRIFFIN: We do not have anything in the Bill which will ensure that a magistrate who acts as a youth justice coordinator or at a family conference is not the same magistrate who subsequently deals with an issue which might come before the court if there is a problem with a breach of a condition imposed by a family conference. Under the provisions of the Bill the family conference may administer a formal caution and then undertake various other functions. Would the Attorney-General be amenable to some provision (which we could have drafted by Parliamentary Counsel) that will ensure that the same magistrate who is a youth justice coordinator is not also the magistrate who heard the issues relating to the youth following that conference?

The Hon. C.J. SUMNER: Yes.

The Hon. K.T. GRIFFIN: When we get to the end of the Committee stage, I will have it drafted. Is it intended by the appointment of all magistrates that youth justice coordinators who are magistrates will exercise that responsibility in the metropolitan area or whether it is very much for country purposes; if in the metropolitan area, is it intended that they will actually take over the operation of family conferences as part of the judicial responsibility, or is it intended that other lay persons will be responsible primarily for family conferences?

The Hon. C.J. SUMNER: The latter is the intention.

The Hon. I. GILFILLAN: I am opposed to magistrates fulfilling the role of the youth justice coordinator in general terms, and feel very uneasy about amended subclause (1)(a). I am sorry if I was distracted while the argument for this amendment was being put. It all happened so quickly. Maybe the Attorney would be indulgent enough for my benefit to explain why magistrates should be brought into this structure of what is basically attempting to be a relatively informal family conference setting?

The Hon. C.J. SUMNER: I have already explained: to ensure greater flexibility especially in country areas. As I understand it, youth justice coordinators will not be magistrates in the metropolitan area normally where it is easier to obtain people to do the job. If magistrates are youth justice coordinators conducting family conferences, they will not conduct them in open court but informally in chambers. I do not see that that is a problem.

The Hon. K.T. GRIFFIN: At this stage there is probably no alternative but to support the clause. I just have some concern about it in the sense that, under clause 10, a police officer is to notify a youth justice coordinator of an offence, and it is the youth justice coordinator who is provided with information and then goes ahead and organises the conference. I would have thought that was largely the responsibility of someone outside the judicial system rather than a magistrate. Again I would be concerned to ensure that that was properly monitored and seen for what it should be; that is, whilst under the overall responsibility of the court, it is still something away from the court and a bit less than more formal proceedings which will occur in circumstances envisaged by the Bill.

The Hon. I. GILFILLAN: I indicate that I will oppose the clause unless there is some way around this. If it is an advantage to have a magistrate in a certain circumstance act as the youth justice coordinator, then the magistrate can be appointed in the normal process. That can apply for rural areas where it might be appropriate. I will not argue for or against that. The way this is drafted, it is open-ended. Any magistrate anywhere can take the role, and that just subverts the whole intention of the informal, unique character of the family conference. If we cannot work our way around it, I intend to oppose the amendment.

New clause inserted.

Clauses 10 and 11 passed.

Clause 12—'Powers of family conference.'

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

Page 8, after line 20—Insert:

(6a) If a youth enters into an undertaking under this section to apologise to the victim of the offence, the apology must be made in the presence of an adult person approved by the family conference of a Youth Justice Coordinator.

This amendment is similar to one I moved earlier. I seek to ensure that an adult person is present when an offender makes an apology to a victim.

The Hon. C.J. SUMNER: Accepted.

Amendment carried.

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

Page 9, lines 7 to 9—Leave out subclause (10) and insert:

(8) If a family conference deals with an offence under this Division, the Youth Justice Coordinator must—

(a) ask the victim of the offence whether he or she wishes to be informed of the identity of the offender and how the offence has been dealt with; and

(b) if the victim indicates that he or she does wish to have that information—give the victim that information.

Again this relates to the issue of information being provided to the victim and it is consistent with an amendment I moved to clause 8.

The Hon. C.J. SUMNER: Accepted.

The Hon. I. GILFILLAN: I indicate that I am not entirely happy with it, but I do not intend to debate the point thoroughly. There are two things that information to the victim require: first, that the victim is fully informed of his or her rights; secondly, that he or she should be protected from any pressure or coercion to get information that really on analysis they do not want. I have thought about the wording and the amendment, and my preference on balance would have been for the original wording in the Bill.

Amendment carried; clause as amended passed.

Clause 13 passed.

Clause 14—'Application of general law.'

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

Page 10, lines 10 to 12—Leave out 'explain to the youth the nature of the allegations against him or her, and inform the youth of his or her right to seek legal representation' and insert:

(a) explain to the youth the nature of the allegations against him or her; and

(b) inform the youth of his or her right to seek legal representation; and

(c) take all reasonable steps to inform the guardians of the youth of the arrest and invite them to be present during any interrogation or investigation to which the youth is subjected while in custody.

Presently if a youth is arrested on suspicion of having committed an offence, the police officer must explain to the youth the nature of the allegations against him or her, and inform the youth of his or her right to seek legal representation. I have sought to extend that to ensure that all reasonable steps are taken to inform the guardians of the youth of the arrest and invite them to be present during any interrogation or investigation to which the youth is subjected while in custody.

The Attorney-General did deal with that issue in his reply by making the point, which I accept, that there is a provision in the Summary Procedures Act, I think, which does require that to occur but it is important to have it in this Bill so that it is clear to all who read it, not just police but others, that there is an obligation to take reasonable steps to ensure that the guardians are informed.

The Hon. C.J. SUMNER: I oppose this amendment for the reasons I outlined previously. It is unnecessary.

The Hon. I. GILFILLAN: I support the amendment, but I would ask the mover to consider that for some young offenders there is no formal guardian available, and that was allowed for in clause 8(2)(b)(ii) where it states:

If a guardian is not available—an adult person nominated by the youth who has had a close association with the youth or who has been counselling, advising or aiding the youth;

So, the Bill has recognised that there can be occasions when a guardian is not available. It has been pointed out to me that there are homeless young people, and I would ask the Hon. Trevor Griffin if he would consider including in paragraph (c) where it reads 'take all reasonable steps to inform the guardians of the youth' the words 'or adult friend of the youth'. The actual wording used in subclause (2(b)(ii) is 'an adult person nominated by the youth'.

The Hon. K.T. GRIFFIN: Certainly, I am sympathetic to that. I have a recollection that I did give some consideration to it but I cannot remember the reason why it may not have been specifically addressed. I would be happy to include something which picks up one of the earlier amendments, but what I would prefer to do is have that properly drafted rather than doing it just on my feet. We might defer the consideration of clause 14 and, hopefully, by the time we get to it at the end Parliamentary Counsel might be available and I might have an opportunity to have that properly addressed. Would the Attorney be prepared to postpone the consideration of clause 14 to enable me to pick up the point that the Hon. Mr Gilfillan has raised?

The Hon. C.J. SUMNER: Yes.

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

That the further consideration of clause 14 be postponed.

Motion carried.

Clauses 15 and 16 passed.

Clause 17—'Proceedings on the charge.'

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

Page 11, line 16—Insert 'the offence with which the youth is charged is an indictable offence and' before 'the youth'.

This amendment makes clear that a youth can only opt to be dealt with in the same way as an adult if the alleged offence is an indictable offence. This is the situation under the Children's Protection Young Offenders Act. Adult offenders who are charged with summary offences are, of course, not able to be tried other than summarily. This amendment merely preserves the *status quo* which was never intended to be changed.

The Hon. K.T. GRIFFIN: This amendment seems to me to be reasonable and I indicate support for it.

Amendment carried; clause as amended passed.

Clauses 18 to 22 passed.

Clause 23—'Limitation on power to impose custodial sentence.'

The Hon. K.T. GRIFFIN: I want to get confirmation of the position. Subclause (5) provides:

The court may sentence a youth to detention for non-payment of a fine or other monetary sum, but its power to do so is subject to the following qualifications.

There are then certain qualifications. There is a provision under the Criminal Law (Sentencing) Act which allows fines which are not paid to be served out by way of community work. I presume that this is one of the areas that might be applied to young offenders, perhaps by way of regulation or in some other way. Can I take it that subclause (5) does not exclude community work being an option for those who default on payment of fines?

The Hon. C.J. SUMNER: That is not intended.

Clause passed.

Clauses 24 to 32 passed.

Clause 33—'Reports to be made available to parties.'

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

Page 16, line 7—Leave out 'child' and insert 'youth'.

This amendment is probably clerical but I move it to ensure that we do not overlook it. I think the word 'youth' is consistent.

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

Amendment carried; clause as amended passed.

Clauses 34 to 36 passed.

Clause 37—'Release on licence of youths convicted of murder.'

The Hon. K.T. GRIFFIN: I want to make the observation that I did raise the issue of the power of the Training Centre Review Board to issue summonses, and having to apply to a justice for a warrant for the apprehension and detention of a youth in certain circumstances.

I made the point that there is a member of the court who chairs the Training Centre Review Board. The Attorney-General said at the second reading stage that if I wanted to make some changes he would be prepared to consider an amendment. I have decided not to propose any amendment. I suppose it is the easy option in the sense that he did point out that the provision is in identical terms to the provisions in the current Children's Protection and Young Offenders Act. They have been there for 15 years and have not caused any problems. I am prepared to allow that precedent to determine that an amendment is not necessary.

Clause passed.

Clause 38—'The Training Centre Review Board.'

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

Page 21, line 17—Leave out 'or' and insert 'and'.

I move this amendment to ensure that the Training Centre Review Board must permit not only the legal representative but also a guardian of the youth to make submissions to the board in relation to release from detention. I think that both ought to have that opportunity rather than one or the other and I think it was probably intended that both should have that opportunity.

Amendment carried; clause as amended passed.

Clauses 39 to 41 passed.

Clause 42—'Absolute release from detention by court.'

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

Page 23, line 30—Leave out 'six' and insert 'three'.

This amendment deals with an application for release from detention. A young offender or youth who has been detained may make an application to the Training Centre Review Board for absolute discharge from the detention order. The present law is that a youth may not make an application if, in the preceding three months, an application has been made and refused or deferred.

I appreciate the Attorney-General's response at the second reading stage that the period was recommended to be extended to six months. I take the view that three months is preferable. I think that if a young offender must wait three months before he or she can make an application for release from detention that can be an inordinately long period of time, and six months for a person of 15, 16 or 17 years of age is proportionately a much longer period than for a person who is very much older. I think it is in the interests of young offenders that they not be discouraged.

Whilst it may mean a little extra work for members of the Training Centre Review Board it will make that much difference because there are not a huge number of offenders in detention. Rather than denying an opportunity to apply for discharge within such a long period of time it is desirable to maintain the *status quo.* I am therefore moving to provide that the minimum period be three months.

The Hon. C.J. SUMNER: The Government opposes this for the reasons that I outlined in the second reading debate.

The Hon. I. GILFILLAN: The Democrats support it and commend the Hon. Mr Griffin for a sensitive and compassionate approach to the situation. I think it is thoroughly justifiable and support the amendment.

Amendment carried; clause as amended passed.

Clause 43 passed.

Clause 44—'Transfer of young offenders to other States.'

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

Page 25, after line 11—Insert:

(2a) Before entering into arrangements under this section, the Minister must allow the guardians of the youth a reasonable opportunity to make representations on the question whether the transfer is in the best interests of the young offender.

This amendment relates to the transfer of youths under detention. Before consenting to a transfer of a youth from one State to another a young offender must be allowed a reasonable opportunity to obtain independent legal advice on the question of whether the transfer is in his or her best interests. There is no reference to the fact that the guardians should also have the opportunity to make representations, and I think that that ought to be provided for. My amendment does require the Minister to allow guardians a reasonable opportunity to make representations on the question of whether the transfer is in the best interests of a young offender.

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

The Hon. I. GILFILLAN: I will out that the same argument that I raised in that earlier amendment—with an adult person for those youth offenders who do not have guardians—would apply here. I wonder whether the Hon. Trevor Griffin would contemplate, when looking at this question, taking on board that this clause also would justify it.

The Hon. K.T. GRIFFIN: There is a different situation here. I considered it, but did not believe it was appropriate. In instances where we have previously been talking about guardians or an adult nominated by the young offender, it has been part of the investigation or part of the process of dealing with the young offender in the justice system. In relation to the transfer of youths under detention, the guardians are easily ascertainable. I acknowledge that some may not have guardians, but how do we identify the adult who should have an opportunity to make representations whether the transfer is in the best interests of the young offender? That is more difficult in cases of transfer from, say, South Australia to New South Wales than in relation to nominating someone who is to be present—in a sense, a witness—for the interrogation or formal cautioning. I do not believe it is necessary; nor is it appropriate to refer to another adult in the context of transfer from South Australia to another institution outside this State.

The Hon. I. GILFILLAN: I understand that my request does not attract the support of the Hon. Trevor Griffin, and I acknowledge that. However, I ask him to look at the issue again: whether the transfer is in the young offender's best interests. The transfer may well not be in the best interests of the young offender for several reasons which could only be argued articulately by an adult if a youth does not have guardians available to make the point on his or her behalf. A significant decision is being made. My argument for the earlier position, which has been accepted in part by the Hon. Trevor Griffin, applies here as well.

Amendment carried; clause as amended passed.

Clause 45—'Transfer of young offenders to this State.'

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

Page 26, after line 17—Insert:

(2a) Before entering into arrangements under this section, the Minister must allow the guardians of the youth a reasonable opportunity to make representations on the question whether the transfer is in the best interests of the young offender.

I did not mean to ignore the Hon. Mr Gilfillan's plea on the last amendment, and I apologise for that. I would be happy to consider it. The problem is that things are moving fairly quickly. I will consider whether or not I ought to change my previous position on it. I can see the point made by the Hon. Mr Gilfillan—that there are young people without guardians—but there are greater difficulties in determining the best interests of a young person through an adult who is not the young person's

guardian than having an adult present for interrogation and other investigative, judicial or quasi-judicial matters. I think it is difficult. I am not persuaded that it is appropriate, but I will give further consideration to it. The amendment that I have just moved relates to the transfer of young offenders to this State.

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

Amendment carried; clause as amended passed.

Clauses 46 to 48 passed.

Clause 49—'Community service cannot be imposed unless there is a placement for the youth.'

The Hon. K.T. GRIFFIN: This clause, which relates to community service, provides:

A court cannot sentence a youth to community service, and a family conference or authorised person cannot require a youth to enter into an undertaking to carry out community service, unless satisfied that there is, or will be within a reasonable time, a suitable placement for the youth in a community service program.

The Attorney-General has pointed out that the provision of community service opportunities would no longer be the responsibility of the Department for Family and Community Services. I think that is a good move. The big question that will arise is how community service programs are to be identified and whether someone, perhaps under the jurisdiction of the court, will have responsibility for that.

Another question that arises relates to resources. If the Department for Family and Community Services is not to have the coordinating responsibility, how does the Government envisage that this is to be arranged in future? Is there to be a full-time officer or officers, with the court or somewhere else, with responsibility for organising those work programs? How will the system now work?

The Hon. C.J. SUMNER: These matters will have to be resolved. It is not true that FACS will not be involved to some extent.

The Hon. K.T. Griffin: I did not say they would not be involved to some extent; I just said they would not have the responsibility.

The Hon. C.J. SUMNER: The honourable member is right about that, but there may be some involvement for FACS, and some of the programs may in fact emanate through FACS. But subclause (2) provides that the court 'must nominate an appropriate person' to supervise the community service order. What other bureaucracy is necessary for that will have to be determined.

Clause passed.

Clause 50 passed.

Clause 51—'Community service may only involve certain kinds of work.'

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

Page 28, after line 23—Insert subclause as follows:

(2) The attendance by a youth at an educational or training course approved by the Minister for the purposes of this section will be taken to be the performance of community service.

This amendment will allow young persons, as part of their community service order, to take part in any educational or training programs approved by the Minister. A number of community service programs currently available combine a work component with a training or educational program designed to increase the young person's employment prospects. For example, youths who, as part of a community service order, have been ordered to clean up sections of Innes National Park have also been enrolled in a horticultural course at Brookway Park.

The Hon. K.T. GRIFFIN: I am not going to oppose the amendment. I have previously been critical of some community work orders for adults which require attendance at education courses; I have not been critical of training courses. In fact, I have recently supported an additional option to allow National Corrective Training to run courses for offenders at the adult level. If they are directed towards providing some development opportunity for a young offender, are conscientiously administered and attendance is obligatory and conscientiously monitored, it seems to me that they can have a beneficial effect.

Amendment carried; clause as amended passed.

Clause 52—'Compensatory orders against parents.'

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

Page 29, line 5—Insert '(or in the case of a youth under the guardianship of the Minister of Health, Family and Community Services, the Minister)' after 'youth'.

I suppose this is one of the most controversial parts of the Bill. I have spoken at length on the issue at the second reading stage and on previous occasions. In his reply the Attorney-General relied upon that previous debate by way of his brief response on that particular issue, so I do not intend to reiterate the arguments for and against the proposition of parents being financially liable for damage caused by their children who offend. I merely make the point again that we are concerned to place responsibility upon young people who offend and not upon their parents.

We are concerned to ensure that the needs of victims are properly addressed, but we do not believe that the potential placing of financial burdens upon parents in the circumstances envisaged by this Bill is appropriate unless there is a cap, and that, I am proposing, is $10 000, unless also the Minister of Health, Family and Community Services, who has the responsibility for some young children, accepts a financial responsibility. The defence in subclause (3) is amended to put the onus back onto the plaintiff. I move the first amendment, which is to place a responsibility upon the Minister of Health, Family and Community Services where that Minister is effectively the guardian of the young offender.

The Hon. I. GILFILLAN: As I have indicated clearly enough previously, the Democrats are opposed to this clause and the principle of compensatory orders against parents. I do not intend to extensively argue the case in the Committee stage, but I did refer in my second reading speech to judgments by the Chief Justice of the Supreme Court. I would like to read evidence given by the Children's Interest Bureau to the select committee in March 1991, when this matter of parents' duty of care was being looked at. The evidence states:

We believe that comments made by the Supreme Court of South Australia in two recent cases, *Robertson v Swincer* (1989) 52 SASR 526 and *Towart v Adler* (1989) 52 SASR 373 are relevant to this discussion. Although those cases were concerned with the parents' duty of care towards a child and not the duty of care owed to a third party some of the observations

made by the court are applicable to the question of liability to a third party.

Essentially the court concluded that more than an omission to supervise a child was necessary for the court to impose a legal duty of care on a parent. There should, at a minimum, be some positive act by the parent which led to the harm.

In his judgment, the Chief Justice observed that there was a difference between a moral duty and a legal duty, and went on to suggest that the former should not readily be converted into the latter. In reaching this conclusion his Honour stated that:

> There are no readily recognisable standards for parental supervision as there are for specific activities, such as driving a motor car. Parents differ as widely as human beings themselves in temperament and personality ... They may differ widely in their parenting capacities and views as to what is required.

That further reinforces the position, which we hold very strongly, that there is absolutely no qualification or modification that can be made of this to change our opposition to it. We therefore do not intend to support any amendment to clause 52 and to vote against it in its totality.

Amendment negatived.

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

Page 29, line 5—Insert '(up to a maximum of $10 000)' after 'compensation'.

The Hon. C.J. SUMNER: We oppose the amendment.

The Hon. I. GILFILLAN: Opposed.

Amendment negatived.

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

Page 29, lines 10-12—Leave out subclause (3) and insert:

(3) An order cannot be made under this section unless the Court is satisfied that the parent or the Minister (as the case may require) did not generally exercise, so far as reasonably practicable in the circumstances, an appropriate level of supervision and control over the youth's activities.

The Hon. C.J. SUMNER: Opposed.

The Hon. I. GILFILLAN: Opposed.

Amendment negatived.

The CHAIRMAN: The Hon. Mr Gilfillan is opposing the whole clause.

The Hon. K.T. GRIFFIN: I think I made it clear at the second reading stage, too, that if we did not get up our amendments we would be opposing the clause, and I therefore put that on the record. It is probably a revisitation of what happened on the last occasion that the issue was before the Parliament.

Clause negatived.

Clause 53—'Establishment of the Juvenile Justice Advisory Committee.'

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

Page 30, line 11—Insert 'who is not a Judge of the Youth Court' and 'District Court'.

I wanted to make clear that one of the persons who will be on the Juvenile Justice Advisory Committee is a judge of the Supreme Court or of the District Court. I want to put it beyond doubt that a judge of the District Court is not a judge of the Youth Court, because all judges of the Youth Court are also judges of the District Court.

Amendment carried; clause as amended passed.

Clauses 54 and 55 passed.

Clause 56—'Functions of the Advisory Committee.'

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

Page 31, line 13—Insert 'and, in particular, monitor and evaluate the giving of informal and formal cautions by police officers under this Act' after 'Act'.

I am seeking specifically to direct the attention of the Juvenile Justice Advisory Committee to a responsibility to monitor and evaluate the giving of informal and formal cautions by police officers. I recognise that already in paragraph (a) of subclause (1) one of the functions of the advisory committee is to monitor and evaluate the administration and operation of the Act.

I believe that the system of cautions contains the potential for some difficulties for both police and young offenders. I am of the view that it ought to be specifically a responsibility of the advisory committee to focus upon that system. Whilst the Hon. Mr Gilfillan addresses only the issue of formal cautions, and it may be argued that the system of informal cautions may be more difficult to monitor, I believe that an attempt at least ought to be made to elevate the informal cautioning system and to require the advisory committee to undertake that responsibility.

The Hon. I. GILFILLAN: I move:

Page 31, line 13—Insert 'including the giving of formal cautions by police officers' after 'Act'.

My amendment has a similar purpose but is slightly less expansive, because I feel that the informal cautions are in some senses confidential and I want to minimise what might be undue pressure to reveal details of those particular issues. But it is a very thin line. The clause as drafted in the Bill would probably quite easily be interpreted that the advisory committee will give a satisfactory evaluation of cautions—certainly formal cautions—and in general terms I would expect they would have picked up the general attitude of police officers involved with informal cautions as to how well they thought they had gone. But it is because we view the informal cautions in a different category from the formal cautions that I have my amendment drafted so that it specifically mentions formal cautions by police officers.

My amendment emphasises it so that we can have reasonable expectation that the report from the advisory committee will adequately cover formal cautions. I would expect that in the report there will be enough reflection on how the informal cautions have worked. I would prefer it not to be nailed down in a form that the Hon. Trevor Griffin has in his amendment, which would put undue pressure on the advisory committee to dish up data and other observations about the informal cautions which may be better left unpublished.

The Hon. C.J. SUMNER: The Government opposes both amendments. They are not necessary.

The Hon. Mr Griffin's amendment negatived; the Hon. Mr Gilfillan's amendment carried; clause as amended passed.

Clause 57—'Reports.'

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

Page 31, line 24—Leave out '31 October' and insert '30 September'.

I seek to bring back the date for reporting to 30 September rather than 31 October. In the first instance, this is the annual report; in the second instance it is the three-year report. I will deal with that second one, I suppose, when we deal with that particular amendment.

It is appropriate, in my view, to give the advisory committee only three months; it is not a big task to prepare the report and have it tabled before too much of the financial year is passed.

The Hon. C.J. SUMNER: The amendment is not objected to.

Amendment carried.

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

Page 31, line 27—Leave out '31 October' and insert '30 September'.

I move this amendment to also bring the date back to 30 September.

The Hon. C.J. SUMNER: Accepted.

Amendment carried.

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

Page 31, line 1—Leave out 'as soon as practicable' and insert 'within six sitting days'.

I seek to remove the words 'as soon as practicable' in relation to the tabling of the report and to provide that it should be tabled by the Attorney-General within six sitting days.

The Hon. C.J. SUMNER: Accepted.

Amendment carried.

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

Page 31, line 2—Leave out 'subsection (1)' and insert 'this section'.

I am seeking that all of the reports which are received by the Attorney-General should be laid before each House of Parliament, including those relating to subclause (3). Subclause (3) provides that 'the advisory committee must investigate and report to the Attorney-General on any matter relevant to the administration of this Act that has been referred to the advisory committee by the Attorney-General for investigation and report'. It seems to me that it is appropriate to have that submitted to the Parliament.

The Hon. C.J. SUMNER: Accepted.

Amendment carried; clause as amended passed.

Clause 58 passed.

Clause 59—'Prior offences.'

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

Page 33, lines 16 to 18—Leave out subclause (2).

I was concerned that records of admissions of guilt dealt with by a police officer or family conference should not be admissible as evidence of prior offending in subsequent proceedings related to offences before the youth reached 18 years of age. I did have in mind initially some modification of that, but I have now taken the broad brush approach and merely seek to leave out subclause (2).

The Hon. C.J. SUMNER: The Government opposes this amendment, and that of the Hon. Mr Gilfillan. The select committee gave detailed consideration to this issue and recommended that records of a formal police caution or family conference should be available to the Youth Court in any subsequent hearings by the youth. I think this is an issue that was fairly central to the select committee's recommendations. This is consistent with the intention of holding the young person accountable for his/her actions and requiring them to understand the consequences of their behaviour. Under the new Bill, the young person will, in many cases, be given a number of chances before they are taken to court. If there has been no change in an offender's behaviour, then obviously, at least to my way of thinking, the court should be aware of this fact.

The Hon. I. GILFILLAN: I move:

Page 33, line 18—Insert 'but any offences so dealt with will be regarded as of minor significance' after 'age'.

I might ask the Hon. Trevor Griffin to explain a little more clearly what he sees as the consequence of his amendment to delete subclause (2) entirely, because in the light of his amendment I may not proceed with my amendment. I was attempting to still allow the detail to be brought before the court, but that there would be some definite recognition that it be regarded as of minor significance. On balance, I still find that a more favoured position. Subclause (1), if it is left in, as it is now in the Bill, provides that:

If a person has been dealt with under this Act by a police officer or a family conference, and the question of prior offences subsequently arises in proceedings relating to offences committed by that person as an adult, the offences for which the person was dealt with by the police officer or family conference will be disregarded.

It is of interest that where a person offending as an adult is concerned there will be no admission of detail of offences committed as a juvenile, and yet in the draft of the Bill we have before us subclause (2), without any qualification, which provides:

Records of admissions of guilt on the basis of which a youth was dealt with by a police officer or family conference under this Act are admissible as evidence of prior offending in subsequent proceedings relating to offences committed before the youth reached 18 years of age.

That would appear as if they come forward without any reflection on taking them, in some degree, less than a conviction through a court. I find it difficult to see consistency in the way this clause is drafted in the Bill. I am seeking to get a grasp of what the shadow Attorney, the Hon. Trevor Griffin, sees as the end result of deleting subclause (2). He still then, I am assuming, sees that as an adult the offences will not be brought forward at all, so that in effect at no time in any court will these prior offences or admissions of guilt be brought before a court.

The Hon. K.T. GRIFFIN: I thought that there was a contradiction between subclause (1) and subclause (2)—the very point that the Hon. Mr Gilfillan made. It also seemed to me that records of admissions of guilt on the basis of which a youth was dealt with by a police officer or family conference (referred to in subclause (2)) extended to informal cautions, formal cautions and the family group conference. I was concerned about admissions in relation to minor offences where informal cautions were given even though there is no official record. We know that there is a record kept but it may not be official.

I tried to work out exactly what was intended by clause 59(2) in light of the fact that the offences are to be disregarded. If they are to be disregarded, what is the purpose of having a record of admission of guilt being admissible as evidence of prior offending? There is an obvious contradiction, so I took the broad brush view that obviously subclause (1) is the subclause the Government would have focused upon first, and if that is the intention let us just knock out subclause (2) because it makes a nonsense of subclause (1).

The Hon. I. GILFILLAN: I do not feel at ease with the way we are resolving this. There is a sensitivity about informal cautions. It is quite clear that subclause (2) will mean that it will be open season on any information that could be got from it, even if there was no formal recording—and it does not say that it has to be formal. Any knowledge that there has been an admission of guilt (and I am not sure how it is to be acknowledged) would be admissible as evidence in relation to any offence committed before the youth reached the age of 18 years, yet from that day on they are obliterated from the record. It does not seem consistent.

The Attorney said something to the effect that there is an advantage in knowing if a person has had previous experience in the system and that that accumulates the knowledge upon which treatment and maybe punishment will be based. I think that that point has to be explored.

However, it has not been satisfactorily dealt with in this clause and I really do not know which way to go with it. My amendment, which does urge that the court regards these admissions as being of minor significance, I admit is a dubious way of trying to distinguish how one takes the gravity of certain information before the court. If I am pushed to it, I am inclined to think that it would be better to delete subclause (2). If we do that, probably , as an adult' could be deleted from subclause (1). If the Attorney wants to put by way of argument that this really is a critical part, I think we are going to have to reconsider it or I am prepared to hear his argument now.

The Hon. C.J. SUMNER: The argument has been put in this forum, in the House of Assembly and in the select committee. I have just given the argument. I am not sure there is more I can add to it.

Members interjecting:

The Hon. C.J. SUMNER: Aid panel appearances do not get to the adult court but the Children's Court appearances do. However, we are not talking about Children's Court appearances here: we are talking about the cautions which would not get to the adult court. Presumably there are the cautions which can be taken into account in the Children's Court but not in the adult court, but you run out of cautions after a while and that means you would end up in the Children's Court. So, if you had a number of Children's Court appearances they would be made available to the adult court.

I think that that is what was intended by the select committee, that there be that progression, that cautions could be looked at in the Youth Court but not in the adult court because, presumably, if they were taken into account by the Children's Court they would be subsumed into any order that the Children's Court had made and that Children's Court order would then be available to the adult court. That is, as I understand it, the thinking of the select committee.

The Hon. I. GILFILLAN: It might be some consolation to the Attorney to know that, when he somewhat reluctantly gets to his feet, he can have the desired effect. I think the point he made is persuasive and, in balance, I believe that my amendment, which does make an observation about the priority in which these matters should be regarded by the court, is useful. Therefore, I indicate that I support my amendment and oppose the amendment of the Hon. Trevor Griffin.

The Hon. Mr Griffin's amendment negatived; the Hon. Mr Gilfillan's amendment carried, clause as amended passed.

Remaining clauses (60 to 66) passed.

[Sitting suspended from 6.7p.m. to 7.45 p.m.]

Clause 14—'Application of general law.'

The Hon. K.T. GRIFFIN: I seek leave to withdraw my original amendment to this clause.

Leave granted; amendment withdrawn.

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

Page 10, lines 10 to 1—Leave out 'explain to the youth the nature of the allegations against him or her, and inform the youth of his or her right to seek legal representation' and insert—

—

(a) explain to the youth the nature of the allegations against him or her; and

(b) inform the youth of his or her right to seek legal representation; and

(c) take all reasonable steps to inform—

(i) the guardian of the youth;

(ii) if a guardian is not available—an adult person nominated by the youth who has had a close association with the youth or has been counselling, advising or aiding the youth,

of the arrest and invite him or her to be present during any interrogation or investigation to which the youth is subjected while in custody.

Consideration of my amendment to this clause was deferred until the remaining clauses were dealt with to enable me to refer to a point made by the Hon. Mr Gilfillan: that if a guardian was not available another adult nominated by the youth should be invited to be present. Clause 14 deals with the issue of arrest and information as to allegations made against a youth. I have incorporated in my amendment the issue addressed by the Hon Mr Gilfillan. I suppose the question is: if that adult is not available then who else? Within the framework of this legislation it is not unreasonable to suggest that if a young person decides to nominate a couple of adults—and that will probably be the pattern—if one of those adults is not available the other probably will be. I do not think that can be drafted into this provision.

The Hon. C.J. SUMNER: No objection.

The Hon. I. GILFILLAN: I am supportive of the amendment. It is difficult to quickly see a wording which would cover the issue that I looked at; but the adult person nominated by the youth, which is mentioned in the amendment, could be used as a restrictive procedure and if the first person nominated was not available that could be the end of the matter. I would like to think that it would be viewed with the tolerance that there may be two or three people who would be appropriate for the youth—and we must remember that we are talking possibly about a homeless young person—with whom he or she may have had some ongoing contact. If the first person is not available, then the second or even the third should be tried to see whether they are available to be with this young offender.

I do not think it is being pedantic. We have all recognised that the undercurrent of this legislation and

the work of the committee is to be constructive, rehabilitative and caring, and it would be quite a substantial consolation to a young person to have someone whom they trust with them in these circumstances. As I say, it is difficult to actually spell out a rather cumbersome amendment. Having put my analysis and dissertation into *Hansard,* I do not believe that the Hon. Trevor Griffin nor the Attorney would disagree with me that the wording of this amendment ought not to be seen as just one and one only as far as an adult person nominated by the youth is concerned, and if the first nominated person is unavailable, the youth should have an opportunity to nominate at least another one or perhaps another two people in the hope that one would be able to be with the youth in the circumstances.

The Hon. K.T. GRIFFIN: That is how I see it operating. I do not think you can draft that to incorporate it in the amendment; but I think probably that is how it will work in practice.

Amendment carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

YOUTH COURT BILL

In Committee.

Clauses 1 to 8 passed.

Clause 9—'The court's judiciary.'

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

Page 3, lines 20 to 33—Leave out subclauses (7) to (10).

Before dealing with the amendment, can the Attorney indicate what the Government proposes to do about transitional provisions? Of course, there is the issue of the current cases before the Children's Court and all the staff of the court, the judicial officers and the magistrates. How is that to be approached in relation to the termination of the court and the commencement of the new court, or is it proposed in the transitional legislation that will be introduced in the next session that the Youth Court will be regarded as a continuation of the existing Children's Court but with the changes proposed in the Bill?

The Hon. C.J. SUMNER: I do not think I have an answer to that question at this stage. Much work has to be done on it, and we will introduce the transitional provisions with the Children's Protection Bill, which will be ready to go when Parliament resumes in August. I shall be happy to let the honourable member have any drafts prepared in the meantime.

The Hon. K.T. GRIFFIN: There is the issue of the judges of the Children's Court. Are they now to be judges of the Youth Court, or is it envisaged that this is a totally new court and, therefore, the previous judges will just go back into the District Court and new appointments will be made, and the same with magistrates? What does the Government envisage as to the way that this will be dealt with when we finally get to the point of having all these Bills proclaimed?

The Hon. C.J. SUMNER: These matters have not been resolved. That is the fact of the matter: the transitional provisions have to be developed. Obviously, the situation with respect to the judges of the Children's Court has to be addressed, and that will be done, but I am not in a position to give any indication at this stage of what the transitional provisions will contain.

The Hon. K.T. GRIFFIN: I am disappointed with the Attorney-General's response, but I will not go into a large scale argument at this stage of the session. I would have thought that, in the establishment of the new structures, at least some thought would have been given to what would happen in the transitional context. However, what the Attorney-General said reinforces my view that subclauses (7) to (10) ought to be removed from the Bill. I made the point in the second reading debate that there has been no substantive argument in favour of five year or 10 year maximum periods of service in the Children's Court.

I made the point that we only just dealt with the Environment, Resources and Development Court Bill. It is a separate court: the judges are to be judges of the District Court and appointed by the Governor. The presiding judge is to be designated by proclamation after consultation with the Chief Judge of the District Court.

That deals with some very important decisions about property and about the way people and their property might be dealt with in the planning resources and development area. One has to seriously question why it is more important to have continuity there than in the Children's Court. Why the Children's Court should be treated differently is an important issue, when compared with the issues relating to the Environment, Resources and Development Court. It is equally important in that we are dealing with young people's lives; we are dealing with the future. There is no denying that there needs to be sensitivity to the issues.

There is no denying that judicial officers have to develop expertise, and if this is directed towards any one or more specific circumstances I think that is an inappropriate basis upon which to make a judgment about the desirability of periods of five years for ancillary judicial officers and 10 years for principal judicial officers. This amendment puts the new Youth Court on the same basis as the Environment, Resources and Development Court, but the Government can still designate the Senior Judge, the judges and magistrates of the court in the same way as they can with the Environment, Resources and Development Court.

The Hon. C.J. SUMNER: The Government opposes the amendment. This was part of the select committee's recommendations and the Government has generally adopted the select committee's approach. It was a bipartisan committee in another place. Accordingly, I oppose the amendment.

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

Amendment negatived; clause passed.

Clauses 10 to 21 passed.

Clause 22—'Appeals.'

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

Page 8, lines 7 to 16—Leave out subclause (2) and insert:

(2) The appeal lies—

(a) in the case of an interlocutory judgment given by a magistrate, two justices or a special justice—to the Senior Judge;

(b) in the case of an interlocutory judgment given by a judge—to the Supreme Court constituted of a single judge;

(c) in the case of any other judgment given by a magistrate, two justices or a special justice—to the Supreme Court constituted of a single judge;

(d) in the case of any other judgment given by a judge—to the Full Court of the Supreme Court.

This amendment relates to the question of appeals. The Chief Justice raised the issue initially but I referred to it in the debate on the Environment, Resources and Development Court Bill. The line of appeal needs to be consistent between the various jurisdictions. The Environment, Resources and Development Court Bill sets out the various lines of appeal in relation to interlocutory judgments by magistrates or justices; interlocutory judgments by a judge; and then judgments by magistrates and by a judge. It seems to me that there is no difference between this area and the environment, resources and development area, and there is some advantage in consistency of approach.

I am suggesting that the appeal should be, in the case of an interlocutory judgment by a magistrate or justices, to the Senior Judge—that is appropriate; in the case of an interlocutory judgment by a judge, to the Supreme Court constituted of a single judge; in the case of any other judgment by a magistrate or justices, to the Supreme Court constituted of a single judge; and in the case of any other judgment by a judge, to the Full Court of the Supreme Court. That then brings it into line with all the other appeals provisions relating to appeals from magistrates and from judges of the District Court, keeping in mind that all the judges of this court are judges of the District Court and appeals ought to be treated no differently because of the different name of the court.

Also in terms of the magistrates, the appeals from the magistrates will then be dealt with as they are in the Magistrates Court. There is no reason to treat magistrates delivering a decision in the Youth Court any differently from magistrates in the general Magistrates Court jurisdiction. I would hope that the Attorney-General might be persuaded to accept the amendments I propose if only for the sake of consistency but also because it is undesirable to have rules for particular judicial officers in this court which are different from those rules which apply if they were sitting in other jurisdictions.

The Hon. C.J. SUMNER: I have no objection.

Amendment carried; clause as amended passed.

Clauses 23 to 33 passed.

New schedule.

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

After clause 33, page 12—Insert:

SCHEDULE

Consequential Amendment

The Courts Administration Act 1993 is amended by striking out paragraph (c) of the definition of 'participating courts' in section 4 and substituting the following paragraph:

(c) the Youth Court of South Australia;.

It may be that this matter should be dealt with in the transitional legislation in the next session, but I want to put it beyond doubt that this court is one of the courts in the participating courts area of the Courts Administration Act to replace the present Children's Court, which, it is already proposed, will be part of that system.

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

New schedule inserted.

Long title.

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

Insert 'to make a consequential amendment to the Courts Administration Act 1993;' after 'powers;'.

Amendment carried, long title as amended passed.

Bill read a third time and passed.

OCCUPATIONAL HEALTH, SAFETY AND WELFARE (REGISTRATION FEES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 23 April. Page 2087.)

The Hon. J.F. STEFANI: The Liberal Opposition is not supportive of this legislation. I would like briefly to go back to the introduction of workplace registration fees. We all recognise that fees were payable for workplace registration at the rate of $4.25 per person and that a maximum fee was set for six workers in any given place. Fees were then payable at the rate of $4.25 for each additional worker. In 1989-90 there were 42 000 employers registered for workplace registration. They collectively paid $1 646 192. At that stage it was the wish of the Government to introduce legislation which changed the method of collection of workplace registrations. In this Council the Attorney introduced amendments to the Bill which referred to the registration fee being payable as a percentage of wages. It was at that stage that the Liberal Opposition strongly opposed the introduction of a percentage fee which was expressed as a collection method for workplace registration. It was through that intervention and opposition that an amendment was mooted by the Government to provide that a periodic fee was payable in relation to registration of a workplace and that this fee would be collected in a prescribed manner.

When the legislation was passed, and some time later, the Department of Labour decided that the fee would be collected by a method that was expressed as a percentage of the wages payable by employers. The fee was set at .64 per cent, and I felt that this was not in accordance with the will of the Parliament. I made strong public representation through the media that this would produce a backdoor taxation method, because it was geared to the payment of wages which included holiday pay, 17.5 per cent loading, annual leave, sick leave, redundancy pay, superannuation payments and other allowances that had nothing to do with the registration of a workplace or employees.

So it was that, in the ensuing period of 1990-91, the Government collected $2 742 079 from the 57 200 employers. This represented a 22.3 per cent increase in the registration of business fees. I can relate that only as a percentage because, when we looked at the average, we considered that 42 000 employers paid $39.19 as an average for the business premises registration and, with the increased money collected, this represented a collection of $47.93 for the business premises. It was an

increased take of $500 000 as a direct proportion of business registration

In 1991-92 we saw a drop in the number of business employers being registered. The number of business employers has decreased to 56 245. Obviously the recession has seen a number of businesses ceasing to operate, and of course this has been reflected also in the collection of business registration fees, which were reduced to $2.6 million for a full year.

It was at this time that the Department of Labour sought to increase the fees by increasing the percentage rate of collection, and it was against much opposition from the Liberal Party that the fees were increased from .64 per cent to .84 per cent of the payroll. I viewed the increase with great alarm at a time when business premises were closing down, employees were losing their jobs, there was a fall in employment opportunities, overtime was being slashed and generally there was a downturn in the economy through a very serious recession. I must say, that is still my opinion.

I have obtained figures for the nine months 1 July 1992 to 31 March 1993. These figures indicate that with the new rate of .84 per cent the Government has seen fit to take an increased amount for business registration. I underline that this is against the background of declining employment numbers, fewer businesses operating because of bankruptcies, reduced wages, reduced overtime rates, and so on. I view this proposed increase with great alarm. For the nine months to 31 March 1993, some 56 274 employers paid $2 789 627. For the full 12 months to 30 June 1993 it is expected that more than $3 million will be collected. With employers struggling to maintain their businesses, in many instances employees face losing their jobs.

I urge the Government to reconsider this position. It is an impost on the employment of people and it produces a negative result in terms of the impost which is placed on employers. Against the background of fewer injuries we should be looking to reduce fees overall and getting the Occupational Health and Safety Commission to reduce or cut its cloth according to its size. I urge honourable members to consider this proposal as a further disincentive for employers to employ people, and I urge the Government to review its position on the fees which it is now proposing and which I consider to be far too excessive in terms of the amount that will be collected from a declining number of employers.

Hypothetically, if we approve this legislation, which proposes to increase registration fees to $3 349 000, and if 1 000 employers were left to operate in South Australia, they would be bound to pay the fixed amount that we, as a Parliament, are approving in legislation to be applicable to and payable by employers. I view that situation with some alarm because I consider it to be totally inappropriate.

I strongly oppose this move. Employers have begged me to put forward the view that at this time there should be no increase in fees and that, if anything, there should be a reduction to assist with employment opportunities and their circumstances. In view of their predicament, I strongly urge honourable members to oppose the proposal.

Bill read a second time.

EDUCATION (TRUANCY) AMENDMENT BILL

In Committee.

Clause 1—'Short title.'

The Hon. M.J. ELLIOTT: For the second time this week a Bill managed to slip through the second reading stage without a member who indicated that he wanted it getting a call, so I will be making a brief contribution during this first clause along the lines that I was going to cover for my second reading speech. Although I have had one amendment prepared that will be moved during the Committee stage, the Democrats' position on the Bill as a whole will depend on the Minister's reply to some issues that I will now raise. The clause causing us concern is clause 4, which amends section 80 of the Education Act. It gives authorised officers the power to take into custody a child who does not have a valid reason for being absent from school, and to return the child to its parents, its guardians or to the school.

I have some queries about the exercise of this power and the potential it has to present young people under 15 years with a risk filled situation. Will authorised officers, those who are not members of the Police Force, be identified in some way? Will they transport children in identifiably Government owned vehicles? These questions are important, because children could very well be placed at risk by people with the wrong intentions being able to pick up children from public places through the pretence of being authorised truancy officers.

Children are being taught at a very young age at school not to speak to or go with strangers. How will this fit with officers walking up to children in the street and asking them why they are absent from school? What if a child refuses to answer, obeying the lessons on 'stranger danger'? Will the child be guilty of an offence if, out of suspicion, it reacts violently to an attempt by an unknown person to take it into custody?

Despite those wider concerns about the Bill we also have a specific problem with the inclusion of members of the teaching service in the definition of 'authorised officers'. Having been a teacher myself, I am able to comprehend the view put forward by the South Australian Institute of Teachers on this issue. It believes that it will affect its members in a way that is dangerous, burdensome and unworkable. I will briefly read a section of a letter I have received which I understand was sent to the Minister of Education, Employment and Training. This is a letter from Janet Giles, the Vice-President of the South Australian Institute of Teachers. In relation to concern about 'burdensome', she says:

> As members of the teaching service an onus is placed on them that does not apply to teachers from non-government schools. If teachers are obliged to approach all children apparently truanting, what happens when they fail to do so? Is this a dereliction of duty? When teachers are off duty: sick, special leave, long service leave, etc., do they have an obligation?
>
> Potentially part-time teachers will carry more of the burden imposed by the onus as arguably they are in a better position to discover truanting children.
>
> How will the authorised officer return children to their school? Use own vehicle? What if parent or guardian is unable to be contacted? How far does the obligation extend?
>
> Unworkable: teachers will not enforce it; therefore, why introduce it in the first place? Taking on the role of a truant

officer is not in the best interest of of teachers who are attempting to foster relationships of mutual trust and understanding between themselves and the community.

Teachers are, after all, employed to instruct not to police the attendance of students at school, certainly in terms of policing by collecting students from outside the school grounds. I will therefore be moving to delete from the Bill the reference to any members of the teaching service. With those exceptions we will be supporting the Bill, but as we get to the appropriate clauses we will be looking for some change.

Clause passed.

Clauses 2 and 3 passed.

Clause 4—'Powers in relation to suspected truancy.'

The Hon. R.I. LUCAS: I move:

Page 1, lines 21 and 22—Leave out paragraph (a).

I do not intend to go over all the detail of my second reading contribution again, but I highlight the problems that the Liberal Party saw in relation to this clause. I indicated that there were a number of ways that Parliament could go if it agreed with the view that there was potentially a problem with having 20 000 teachers as authorised officers in relation to this issue. We could have a situation where persons, perhaps portraying themselves as teachers, approach young children who might be truanting from school, and seek to apprehend them and take them off, supposedly to a school, or back to their parent or guardian and perhaps they might not do so.

In all the discussions that I have had with members of the Government and members of my own Party there has been a common view that that particular aspect of the legislation does create some problems and that we as a Parliament ought to address this issue. As I said, there are a couple of options: one is—and I had one amendment drafted—similar to other precedents that we have in legislation requiring all authorised officers to carry some means of identification. I think in the National Parks legislation we have authorised officers having to carry identification cards. The amendment I had drafted originally would have required that all authorised officers carry an identification card. When one looks at the logistics of that, it would mean that 20 000 teachers would have to be issued with identification cards with photographs and signatures, and a whole mechanism would have to be established within the teaching service for that to occur.

The other option was just simply to oppose this aspect of the change in the legislation by extending it beyond authorised officers to every member of the teaching service. But equally in our view there is a problem with that in that currently we only have a handful, or perhaps two handfuls, of attendance officers throughout the whole State and quite simply there are not enough people working in this area to tackle the problem that has been identified by the select committee.

So the compromise position that I put to the Committee this evening is a combination of legislative change but also administrative change as well. My amendment means that we do not appoint all teachers as authorised officers; we strike out that new provision in the Bill. That means that we stay with the existing provision in the Education Act which says that any person authorised in writing by the Director-General to exercise the powers of an authorised officer under this Act can be an authorised officer.

The current Act does not mean that the only authorised officers in relation to truancy have to be persons that we know as attendance officers. It is possible that the Minister of Education and the Director-General could authorise that principles can delegate authority and appoint other persons within schools—for example, perhaps school councillors in particular or some other senior people in the school, such as the deputy principal or particular key teachers with expertise in behavioural management—as authorised officers. There is a range of other potential senior people within schools that might be suitable. Obviously, that would not need to occur in every school. I do not want to name schools, but there may well be certain schools where quite clearly you would want to appoint a number of authorised officers within the schools; in other schools it may well not be necessary to appoint any authorised officers.

But the situation ought to be that if you appoint an authorised officer under this part of the existing Act, then those officers ought to be clearly identifiable, and therefore the scheme of arrangement ought to be that any person authorised by the Director-General ought to carry some method of identification. That limited number of persons would then carry a form of identification, a card with a photograph and a signature, to identify themselves clearly as authorised officers under these particular provisions of the Education Act.

I have had some discussions with the Minister in charge of the legislation in another place. I understand he has conferred with the Minister of Education. It is my recommendation to this Council, and I understand that the position will be supported by the Government—but the Government can speak for itself—that we delete this particular provision but at the same time in another place, on behalf of the Government, the Ministers indicate how, administratively, the existing provisions of the legislation can be used to ensure that (a) we have an increased number of persons appointed as authorised officers working in this important area of truancy and (b) that any such authorised officers shall have to carry some means of identification by photograph, card and signature and anything else that might be deemed to be necessary by the Minister of Education and the Director-General of Education.

So, I recommend this particular amendment to the Council. We do support the other part of clause 4 which gives authorised officers, such as police, for example—and they are the most important example of these authorised officers—greater powers. Currently all they can do is ask a truant or a suspected truant their name and address and then do nothing about it. The second part of clause 4 gives them the power to return the truant to either home or to the school.

The select committee took evidence from a number of senior police officers. Murray Bridge was one example, where already, perhaps contrary to the strict letter of the law, this particular scheme operates and operates very effectively. In a successful scheme at Murray Bridge, police officers currently identify the truants and return them to the school or to the truant's home. With this combination of amendments we believe that those sorts of schemes can continue to operate not only in Murray

Bridge but successfully through other areas of South Australia as well. I commend the amendment to members.

The Hon. M.J. ELLIOTT: I asked some questions earlier, but I do not think the Attorney heard any of them. So, I will ask them again. As I understand it, the Government is about to agree to the amendment, which removes any member of the teaching service. Now there may be some specifically appointed and the number of people acting as truancy officers has been much reduced, which overcomes a number of concerns I raised. However, I still have a couple.

In particular, how does the Government see the apprehension process working? We will clearly have non-uniformed people approaching children—and at times these truants are quite young children—and insisting that they accompany them and get into a car. In its very simplest form that seems to be how it will work. Can we have some explanation as to exactly how it will work? How will we avoid young children being deceived by people posing as truancy officers, perhaps even having their own home-made badges? How will a young child tell the difference?

The Hon. C.J. SUMNER: I understand that at the moment 12 education officers do truancy work, and that will continue. There will be 12 truancy officers. They do not call them that because 'truancy officers' are unfashionable words these days.

The Hon. R.I. Lucas: Attendance officers.

The Hon. C.J. SUMNER: Yes, attendance officers is one of the changes in terminology that has occurred as a result of modern education concepts. Be that as it may, they are no longer truancy officers but attendance officers. The 12 will continue because it is not the whole teaching service now: there are 12, they will be specialist officers, they will establish some form of identification and, if need be, they will involve the police.

The Hon. M.J. ELLIOTT: How will a child who is truanting and is approached by an adult who says, 'I am an attendance officer. You are required to accompany me. The law requires you to do so'—because that is what the amendments are doing—know a legitimate attendance officer? This is quite a radical change in role. Previously they could not take people into their custody.

The Hon. C.J. SUMNER: I do not know how this has been worked out. I assume that the attendance officers will have a form of identification. I am advised that they will probably know who the kids are anyhow, given the nature of this business. They will be full-time. No doubt they will know who the problem kids are, those who are not attending school. If they approach them and a request is made for identification I assume that they will have some form of identification. I do not know myself but I am advised that some form of identification will be issued, and that is fair enough. If they are appointed as statutory officers, I guess it is reasonable for them to have some form of identification, and that is what I assume will occur.

The Hon. R.I. LUCAS: I have had some discussion with the Hon. Martyn Evans who has had some discussion with the Hon. Susan Lenehan on this issue. As I understand the position of the Government, it is broadly as the Government has indicated. I think the Hon. Mr Elliott raises a difficult question and I acknowledge it. But the point I made by way of interjection is that it is possible under the current arrangements in this area and in others for people to masquerade as police officers and all sorts of people and take advantage of young children. Not all police officers wear readily identifiable police uniforms. There have been a number of cases of people masquerading as police officers or other people in authority.

I agree with the Hon. Mr Elliott that potentially you have a problem where people seek to get around any provision of legislation we might have. What we are seeking to do here is broadly in line with the position I understood the Hon. Mr Elliott to have anyway, and that is to restrict as much as we can the problems inherent in the legislation. Therefore, there will be this much smaller group of attendance officers or other officers authorised to act in this area and they will have to be identifiable in some form or another. The Ministers have agreed to that. They have not actually drawn up the cards and decided on whether or not there will be photographs, although that does exist in other pieces of legislation and personally I support it.

Even with all those provisions I accept that it is possible that someone could seek to portray themselves as either an authorised education attendance officer, a police officer or a FACS worker and seek to do the sorts of things that the Hon. Mr Elliott has done. Personally, I do not think that we can block every potential problem, but I think we can sensibly and reasonably tackle the legislation in the way in which we have to try to block the vast majority of problems that might exist.

The Hon. M.J. ELLIOTT: I think this is quite dangerous, but I will not prolong the debate because I can see that minds have been made up. I would teach my own children not to talk to strangers. I suppose that eventually children will become aware that there is such a person as an attendance officer. My child might have gone down the street for a legitimate reason, such as an appointment with a dentist, and might be approached by an adult. Children would know that there are attendance officers, and that attendance officers can ask them certain questions. Normally they would been instructed to keep away from strangers. If the child knows that they have done nothing wrong, they will keep away, but this legislation legitimises a stranger speaking to a child who may be doing nothing wrong. It sets up a situation that is more open to abuse than if plain clothes police officers or FACS officers were involved. At present my children know that if they have done nothing wrong they must not talk to strangers. Now, even though they might have done nothing wrong, a legitimate attendance officer may approach children outside a school and ask them to explain why they are not inside.

The Hon. C.J. Sumner: What's your solution?

The Hon. M.J. ELLIOTT: I suggest that, if we want this legislation to work, a uniformed officer should effect the apprehension. The child could then be passed on to a truancy officer for processing, and that would not worry me, but I think the apprehension should be by someone who can approach the child legitimately. When I say 'legitimately' I mean in terms of what we are trying to teach our children. If a uniformed officer approaches a child, that is legitimate. Children are not taught to avoid

speaking to a uniformed police officer. That system would work, but I have no doubt that the system proposed in this legislation will be abused. I cannot believe the stupidity of this. It sets up a situation that will make it very easy for the paedophiles of this world, and Adelaide has its fair share. We have seen many reports in the newspaper about attempted abductions from parents. They are very game people. Frankly, I am horrified. I ask the Attorney why the apprehension, which is a new role for attendance officers, cannot be done by a uniformed officer with the rest of the work then being done by someone out of uniform; in other words, an attendance officer?

The Hon. C.J. SUMNER: I guess we have a problem, because we are trying to decriminalise truancy. Once truancy has been decriminalised we have to have some way of getting kids who are truanting back to school or into the family environment. If we decriminalise truancy and then say that although it is decriminalised we will still involve the police in the apprehension process, truancy would hardly be decriminalised. All we would be doing is decriminalising it in name rather than in substance. I am also advised that if we bring uniformed officers into the situation, particularly if truancy is not a criminal offence any more, it may exacerbate the situation, create tension and cause conflict between the young person and the police. If I can speak freely, I think there is a logical flaw in this whole business, because what they have said is, 'We will decriminalise truancy', but then they have said, 'But effectively we will still be able to arrest people and take them away.'

The Hon. K.T. Griffin: Like getting rid of public drunkenness?

The Hon. C.J. SUMNER: A little bit but perhaps even more, because here you can take them to the school, the family or whatever. I am not sure that what the select committee has come up with actually hangs together. However, that is an off-hand remark at 9 o'clock on the last night of sitting. You decriminalise it but still have effectively what is an arrest power. I really do not know how the matter can be resolved at this point in time. The select committee was fairly strong that this should be the process that was adopted, except it wanted all teachers to be truancy officers which, when I read my briefing note, I must confess sounded a bit over the top, but I see that it was also the view of some other people. We have now come back to truancy officers who have the power to apprehend people, who can call the police in support of that apprehension, but it may well be that you have decriminalised it in name but not in fact. I guess all that can be done is to say, 'We will wait and see how it works.'

The Hon. M.J. Elliott: After we have lost a couple of kids.

The Hon. C.J. SUMNER: I think that is a bit dramatic, frankly. What you are saying is that people will deliberately go out of their way to pose as truancy officers in order to apprehend children. I do not think the chances of that happening are very great. If you wanted that to happen now, it could. Someone could pose as a plain-clothes police officer, get a card, etc. and take action to try to abduct a child. I really do not know what the solution is to the problem. I am not sure that it can be resolved now except in the way that has been suggested and with the undertaking that the Education Department will have to set up proper identification procedures. I suppose the only other thing to be considered is making it an offence—

The Hon. R.I. Lucas: A uniform?

The Hon. C.J. SUMNER: That too, or we could make it an offence to impersonate a truancy officer, as it is an offence to impersonate a police officer. There might be other options if people had the time to work them out.

The Hon. M.J. Elliott interjecting:

The Hon. C.J. SUMNER: I agree with that in general terms. I am happy if the honourable member wants to have a discussion with the Hon. Mr Lucas and the Hon. Mr Evans (who has had the conduct of this matter) to see whether or not there is some way that there can be an agreement on it. I am not unsympathetic to everything that is being said by the Hon. Mr Elliott, but that is all I can offer at this stage.

The Hon. M.J. ELLIOTT: Another question worth examining before we leave this and perhaps even consider reporting progress is: what happens to the child who refuses to cooperate with one of these people? If a child refuses to cooperate with an attendance officer in terms of supplying information or accompanying them, can the officer use any sort of force? Is the child subject to any penalty for refusing to cooperate? If the child refuses to go, in what position does that leave the attendance officer?

The Hon. R.I. Lucas: Martyn says they will use commonsense.

The Hon. M.J. ELLIOTT: I want to know the legal position. What happens if the attendance officer lays a hand on the child to apprehend the child? What happens if the child refuses to go?

The Hon. C.J. SUMNER: They have power in the Act to apprehend them and take them. That is their legal power to do it.

The Hon. M.J. ELLIOTT: What of the child who then resists, who does not want to go with a stranger, who does not trust this character, which would be a legitimate for a child to think? Here is a stranger saying to them, 'I am an attendance officer, come with me, here's my card.' I would be telling my children to resist. No way known would I let them get into a car—no way!

The Hon. C.J. SUMNER: The Hon. Mr Elliott has raised issues that do need exploring. As he is a minority we could steamroll him—

The Hon. R.I. Lucas: We wouldn't do that.

The Hon. C.J. SUMNER: Well, I do not think we should do that. At this stage I think we should report progress, but on the understanding that the honourable member will take the opportunity to speak with the Hon. Mr Evans and perhaps with the Minister of Education, Employment and Training, as well as the Hon. Mr Lucas and the officers who have been advising on the matter. One option is that, if it is not urgent to get the Bill through, it could be brought back in August with the Child Protection Bill, because I understand that, in any event, the whole package is not going to be proclaimed until a couple of months after that, as I indicated earlier. So for the moment I suggest that we report progress, have some informal discussions and see where we stand

at the end of those discussions. If they can be resolved tonight, I would prefer that, so that we can get this matter out of the way. If not, and subject to what my colleague says, there is the option of deferring it until August.

Progress reported; Committee to sit again.

WORKERS REHABILITATION AND COMPENSATION (REVIEW AUTHORITIES) AMENDMENT BILL

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

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

Page 1—

Line 15—Leave out 'This' and substitute 'Subject to subsection (2), this'.

After line 15—Insert new subclause as follows:

(2) Sections 3 and 14 (ab) will come into operation on assent.

It is proposed that the commencement provisions be amended such that sections 3 and 14 (ab) come into operation on assent. These provisions deal with the proposed changes to service providers' right of review where an amount in excess of the gazetted rate is charged.

The Hon. J.F. STEFANI: The Liberal Opposition has no problems with the amendments, although we do see a problem in terms of the present disputes that are proceeding before the courts, and we have proposed amendments which we consider address this issue. If we had some indication from the Minister or the Government as to its position, we might be in a position to consider supporting the amendment.

Amendments carried; clause as amended passed.

Clause 3—'Compensation for medical expenses, etc.'

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

Page 1, line 17—After 'amended' insert:

(a) by striking out subsection (4) and substituting the following subsections:

(4) Where a worker has been charged more than the amount that the worker is entitled to claim for the provision of a service in respect of which compensation is payable under this section, the Corporation may reduce the charge by the amount of the excess.

(4a) A decision of the Corporation under section (4) is not reviewable; and

(b) by inserting 'where the charge has been disallowed under section (5)' before 'the provider's right' in subsection (6)(a)(ii); and

(c) by striking out from subsection (8) 'of a kind approved by the Corporation for the purposes of this section' and substituting 'provided by a person who has an agreement with the Corporation for the provision of those programs or services'; and

(d) [*The remainder of clause 3 becomes paragraph (d)*]

The Act currently provides that medical and associated costs incurred by disabled workers are compensated according to scales published by the WorkCover Corporation in the *Gazette*. If no such scale is published, the compensation is paid according to what is reasonable for the service provided. Where a provider charges more than the gazetted rate, the corporation may reduce the charge to the gazetted rate and the provider has a right to seek a review of the decision to reduce the charge. Although the corporation consults with relevant associations representing service providers prior to gazetting rates, some providers are seeking a review of every decision to reduce the charge to the gazetted rate. There is currently a backlog of approximately 1 100 cases awaiting review. This is causing delays in the processing of disputes on other matters for which the review system was primarily established.

This amendment will allow the corporation to reduce medical and associated charges to rates that have been fixed by gazettal. There is no right of review to providers whose charges have been reduced. The current provision that the worker is not liable to the provider for the amount in excess of the reduced rate is retained to protect workers.

The Hon. J.F. STEFANI: I move:

Page 1, lines 17 to 24—Leave out all words in these lines after 'amended' in line 17 and substitute:

(a) by striking out from subsection (1a)(a) 'by the corporation';

(b) by striking out from subsection (9) 'Subject to subsection (10)' and substituting 'For the purposes of this section';

and

(c) by striking out subsection (10) and substituting the following subsections:

(10) The corporation—

(a) may, on its own initiative;

and

(b) must, on the application of an association recognised by the regulations for the purposes of this provision,

review the scales in consultation with—

(c) the Self-Insurers Association of South Australia Incorporated;

and

(d) any association which, in the opinion of the corporation, represents the providers of services who could be affected by the review (including, in the case of an application by an association under paragraph (b), that association.)

(11) If a party to a review under subsection (10) is dissatisfied with the outcome of the review, or if a review is not concluded within a reasonable time, a party to the review may apply to the tribunal for an order under this section.

(12) The tribunal may, or on application under subsection (11), if satisfied that it is reasonable and appropriate to do so, order that the scales be varied (and any such order will have effect according to its terms).

This amendment seeks to address the problems which have occurred in the past when associations representing the service providers have been involved in protracted and costly review procedures in order to achieve adjustments in the scale of service fees published and declared by the WorkCover Corporation. The proposed amendment will allow WorkCover, under its own volition, to initiate a review in the scale of fees payable for the provision of various rehabilitation services, after consultation with the appropriate organisations, as

provided under section 32 of the Act. The amendments proposed by the Liberal Opposition seek to allow an association representing rehabilitation service providers who are recognised by the regulation to apply for a review of the published scale of fees.

The proposed amendment also provides for the mechanism through which unsatisfactory outcomes of fees reviews or, in the event of protracted delays in reaching agreement on the setting of new service fees, a party to the review process may apply to the tribunal for an adjustment and resolution of the disagreement. This amendment will give the tribunal the authority to determine where appropriate the new scale of fees or to vary fees when the tribunal is satisfied that it is both reasonable and appropriate to do so. I consider the amendment to be of assistance to all parties involved in the provision of WorkCover rehabilitation, and I commend the amendment to members.

The Hon. K.T. GRIFFIN: My proposed amendment is, in a sense, secondary to the issue raised by the Hon. Julian Stefani. If his amendment gets up, I will not need to move mine, so initially I support his amendment. My reason for that is similar to that of my colleague the Hon. Julian Stefani. One of the problems with WorkCover is that, whenever it gets into a situation that it does not like, it seeks to cut people off at the knees. It seeks to remove rights of review and rights of appeal and then to cut people off at the knees. If there are existing claims in the system, it seeks adversely to affect those claims. We saw it in the amendments at the end of last year, where there were injured workers who had particular rights and WorkCover came in, through the Government, and sought amendments to the legislation which had the effect of removing the accrued rights of those injured workers.

So, here we have a Government monopoly—no competition, no accountability and it can set fees—and now what it wants to do is to not even be the subject of review in accordance with the mechanisms which have already been established in the legislation. It is unconscionable that a Government monopoly, unaccountable, should seek adversely to affect existing rights and then to put itself effectively above the law and in a preferred position by the amendments which are being proposed. Who else in the community is in a position where they can be the beneficiary of services, be charged a fee and then send back the bill and say, 'Well, I'm only going to pay half of this' and there is no right of recourse. That is what is happening here. At least in terms of the Federal Medicare system, which is a monopoly and to which doctors and other providers are subject, there is a right of review of the fees charged by medical practitioners.

I think there ought to be a right for an independent review. Once the Government's amendments are passed there is no right of review, so WorkCover can do what it likes. I think that is wrong in principle and I would argue strenuously against it and continue to fight against that sort of attitude. The amendments also seek to address an issue of a case that is already before the courts and they are seeking, by the amendments, to pre-empt the decision. I have had letters, as my colleague the Hon. Julian Stefani has had, from solicitors dealing with that particular case. The case (and I think I am at liberty to mention it because it is on the public record through the courts system) relates to Industrial Rehabilitation Services Pty Ltd. I had an initial letter from the lawyers for that firm, and I think it is important to read parts of it, as follows:

> The amendments deal with a variety of matters, one of which is innocuously described as an amendment simply to clarify the meaning of the words 'approved rehabilitation' for the purposes of payment of costs incurred by workers. In fact, the amendments, if passed, will effectively usurp the function of the courts and will substantially affect the rights of all persons involved in the provision and receipt of rehabilitation services under the WorkCover scheme. We act for Industrial Rehabilitation Services Pty Ltd and we are presently involved in litigation pending in the Supreme Court of South Australia on its behalf against the Workers Rehabilitation and Compensation Corporation which is the subject of a full hearing by the Full Supreme Court, listed at 10.15 on Monday 3 May.

They wrote that letter to me on 27 April, and the Government's amendments were put on file on 21 April. Even before the matter went to court this was designed to short circuit the system. It is not a bad system when you have friends at court, in the sense that the Government can be persuaded to enact legislation which is going to have the effect of cutting off any challenges to the way you have exercised your powers. I think that is an outrageous way to behave, and it is even more outrageous when it relates to a Government statutory authority.

The Attorney-General introduced a number of statements about public sector reform and accountability. In fact, one of the statements which he tabled on Tuesday talked about statutory authority review and the standards that ought to be met. I do not believe that in bringing these amendments before the Council those standards in relation to a statutory corporation have been complied with.

Of course, the other factor is that these amendments are substantive issues and are not issues that were considered by the joint select committee. They are not issues of which reasonable notice had been given through the introduction of a Bill in the House of Assembly and then allowed to work through the process.

The solicitors for Industrial Rehabilitation Services Pty Ltd subsequently wrote to me and said:

> The hearing foreshadowed in our letter proceeded before Justices Legoe, Mullighan and Duggan on Monday 3 May 1993 and judgment has been reserved. IRS of course was the company referred to in the explanatory notes to clause 3(c) of the Workers Rehabilitation and Compensation Review Authority's Amendment Bill. It is clear that the WorkCover Corporation and the Government are asking the Parliament to change the law before the Full Court has made its decision. This, we submit, would be a dangerous precedent and as we pointed out earlier puts the Parliament in the invidious position of usurping the power of the courts. That blatantly offends the notion of separation of powers under the Constitution. The amendment referred to above seeks to enshrine in legislation the very powers of WorkCover which are currently being challenged in the courts. We believe it is important for you to know that during the proceedings on 3 May the judges raised a number of matters which relate directly to the intent of the proposed amendments. While we would not seek to pre-empt the decision of the court the comments clearly indicated that the judges have

serious concerns about WorkCover's powers in relation to rehabilitation providers and their validity under current law.

During the course of argument, Justice Mullighan said an important matter of social principle appeared to be involved. He said that if WorkCover's arguments were accepted 'this corporation can develop small coteries of rehabilitation providers. Workers and employers are potentially excluded from having a say in this at all.' Justice Legoe immediately followed that 'This would result in a situation reminiscent of the quote of the Queen in *Alice in Wonderland,* "It is because I say it is."' We stress that we are not in any way predicting the outcome of the case. However, the comments made by Their Honours and the fact that the court reserved its decision clearly demonstrates that the issue is not a superficial one but rather involves important matters of social principle and the powers of the corporation in administering the Act. Members of Parliament should be concerned (1) that they are being asked to debate a matter still before the courts; (2) about amendments which seek to achieve a situation that the Full Supreme Court considered required further deliberation before making its decision.

So, that is in relation to that particular matter. Then, there is other correspondence which I think is relevant relating to the review of medical practitioners' fees. A firm of solicitors wrote to their client, a radiology firm whose accounts have been the subject of query, to state:

We advise that some 64 applications were considered at a short hearing before Review Officer Mason on 13 April 1993. Mr Mason was very concerned that the corporation had provided no documentation in relation to any of the claims, nor had they notified any of the workers. Mr Mason was very concerned that, given WorkCover's legal responsibility to only pay the gazetted fee, and in the event that we are successful at review in showing that our charges are reasonable, then the worker is left to pay a $500 gap. Mr Mason was also concerned that the corporation in some cases by not making a decision to reduce the fee but just sending a cheque for the reduced amount.....leaves many workers exposed. There is no doubt that the number of applications for review are putting pressure on the corporation. The corporation in the last month or so have decided to nominate one review officer to deal with all matters in relation to a provider, and Mr Mason will be the review officer to deal with all MRI claims. After informing Mr Mason that there will be discussions in the future as to a reasonable fee, all matters have been adjourned to Monday 19 July 1993: the WorkCover matters at 10a.m., Health Commission matters at 10.15 a.m. and those involving the E&WS at 10.30 a.m.

Then, I received a letter from a firm of medical practitioners involved in medical imaging to set out some of the background to the way in which this matter of fees has been dealt with. We must remember that some of the equipment used by some of these firms—this multi million dollar machinery, extensive investment in trainingand provision of services and the technology—often provides enhanced capacity for other medical practitioners and rehabilitation providers to provide a better service to injured workers and to get them back to work at an earlier time. They state:

For over two years WorkCover have been billed at the AMA recommended fee for MRI scans and have paid these accounts as they have done for all other medical imaging examinations.

It is not as though the fees have just gone up and WorkCover has decided it is too high. The fact is that the fees are being paid in accordance with the AMA recommended fee. The letter continues:

Last year [1992] WorkCover expressed concern at the level of the MRI fee and the number of examinations being requested and discussions took place between the AMA, MRI service providers and WorkCover representatives including Mr Owens. During these discussions WorkCover was informed that a review of the present fee was being undertaken and verbally agreed to delay the possible gazetting of a reduced fee until this information was available.

Subsequently WorkCover without notice [note that] on 19 November 1992 gazetted a fee of $420 and made this fee retrospective to 1 December 1992 [another incredible proposition], thereby not allowing the provider the opportunity to decide whether they wished to provide this service to WorkCover patients. In view of this confrontationist and unilateral action and because the existing fee was an AMA recommended and calculated fee, we have appealed those examinations where the fee has been reduced.

I understand that the AMA fee review has recommended a fee of $783 per examination due to changes in the costs associated with providing MRI examinations. That fee is to be discussed between AMA representatives and WorkCover, but I understand it has been difficult to arrange a meeting with Mr Owens to achieve that purpose.

Many other service providers have concerns about the proposed amendments. They took them by surprise and they have made representations to my colleague the Hon. Julian Stefani as well as to me and other members of the Liberal Party, as I am sure they have made representations to the Government and the Hon. Ian Gilfillan. There are some principles here that need to be considered, particularly as WorkCover is a Government monopoly. Accountability has to be established, as well as some relatively independent basis for reviewing those issues which are in dispute. It cannot act as prosecutor, judge and jury; it has to accept that its actions have to be the subject of scrutiny and accountability.

I support the amendments proposed by my colleague the Hon. Julian Stefani because they will provide an opportunity to ensure review and that WorkCover does not exercise its power without being properly accountable for it.

The Hon. C.J. SUMNER: The Government opposes this amendment. The tribunal is not considered to be an appropriate body to resolve such matters. The Minister of Labour Relations and Occupational Health and Safety, in recent discussions with the President of the AMA, has given an undertaking that WorkCover will look at a process of referring any disputes on the setting of fees to an independent arbitrator. This is considered by the Government to be preferable to referring such matters to the tribunal, which is not really an appropriate body to determine these matters. I am advised that the amendments do not apply to cases already in the pipeline where a review application has been made. Where a review application has not been made, the Government's proposal would apply. However, I am advised that it is not interfering with the process of applications that have already been lodged.

The Hon. I. GILFILLAN: I have been assured that no retrospective aspect is involved. I have also had an opportunity to read a letter written to the President of the AMA from the Minister of Labour Relations and Occupational Health and Safety which covers ground

already outlined by the Attorney-General. I do not have any sympathy for processes which unnecessarily cost South Australian employers money. If there is one way that can happen it is by an expansion of and a bogged down procedure for dealing with workers compensation claims and the concomitant providers of rehabilitation, medical attention and legal services.

I have been around too long not to realise that at virtually every step there opens up another field into which what accumulates to millions of dollars of employers' premiums can go and not in fact to providing for the needs of injured workers. So, I believe that there is a certain amount of competition in this matter; that, if the fees attempted to be established by WorkCover are not satisfactory, WorkCover will have difficulty getting the medical attention and the rehabilitative professionals to do the work.

So, there will be a constant field of negotiation and the seesaw will probably oscillate! If the process that the Attorney outlined of attempting to reach mutual agreement, the enterprise bargaining aspect, cannot be reached, it can go to arbitration where an independent arbitrator will be appointed by consent from the two parties. I believe that it is a satisfactory option to accept to avoid what is likely to be an ongoing series of reviews that would tie up the tribunal and involve costly legal expenses, and at the end of the day I doubt whether anyone will be better off. In case anyone had not got the message, I oppose the amendment.

The Hon. J.F. STEFANI: I am disappointed that the Hon. Mr Gilfillan has not seen the position that the Liberal Opposition has tried to outline. Substantially there will be a problem, because we are experiencing it right now. The Liberal Opposition has endeavoured to address the problem of parties who do not agree on a method of setting fees by directing through legislation the consultative process of the association representing the service providers, on the one hand, and the corporation, on the other hand.

The problem that has arisen has been that some of the fees have not been adjusted over a long time, and this has provided the ground for dispute. Presently we have a dispute that has been long running, where the review process has been prolonged and where substantial legal fees have been paid by an association. I am led to believe that the fees have been upwards of $80 000 because the process of review has been deferred and prolonged and there have been problems in addressing the issue.

We are proposing that the fees should be reviewed at will by the natural initiative of the WorkCover Corporation, on the one hand, and a review can also be initiated by application by an association representing the service providers, on the other hand. I believe that it is perfectly legitimate for fees to be reviewed where agreement can be reached and those fees can then be published. Where agreement is not possible we have provided a mechanism through which a disagreement can be resolved, and we have also provided for the mechanism through which a decision on fees that is not appropriate or has some disagreement can also be referred to the review tribunal. I am urging the Hon. Mr Gilfillan to reconsider his position. However, we are strongly of the view that, if we do not have the support, we will divide.

The Hon. K.T. GRIFFIN: Did the Attorney-General say that there had been some undertaking in relation to independent arbitration? Could he outline what undertaking has been given in relation to independent arbitration? Who is going to appoint the arbitrator? Who will pay the arbitrator? What are the terms of reference of the arbitrator, and in what instances will the arbitrator be involved?

The Hon. C.J. SUMNER: The arbitrator is to be chosen by both parties, and therefore agreeable to both parties and the costs to be shared.

The Hon. K.T. GRIFFIN: Could the Attorney-General indicate what the scope of the arbitration might be? Is it in relation to all care providers? Is it only in relation to medical practitioners? Is it a continuing arbitration, or is it only in relation to the current dispute? Can he give some indication as to those matters?

The Hon. C.J. SUMNER: It is an on-going proposal and the offer has been made to the AMA by letter, signed by the Minister of Labor Relations. The offer will extend to the other associations involved in providing services.

The Hon. K.T. GRIFFIN: Related to fees?

The Hon. C.J. SUMNER: Yes, and related to fees.

The Hon. J.F. STEFANI: Would the Attorney indicate what time frame WorkCover has in mind in terms of reviewing fees? We have had the position where physiotherapists' fees have been set for a long time at a particular level and hence the catch up problem of the huge increase which was submitted to WorkCover for consideration and hence the dispute.

The Hon. C.J. SUMNER: Providers are at liberty to apply at any time and if it is not resolved with WorkCover then it would go to the arbitrator.

The Committee divided on the Hon. J. Stefani's amendment:

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

Noes (10)—The Hons T. Crothers, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Anne Levy, Carolyn Pickles, R.R. Roberts, T.G. Roberts, C.J. Sumner (teller), Barbara Wiese.

Pair—Aye—The Hon. Bernice Pfitzner. No—The Hon. G. Weatherill.

Majority of 1 for the Ayes.

Amendment thus negatived.

The Hon. K.T. GRIFFIN: What has been drawn to my attention—and I think this is just to clarify a position rather than create a substantive problem—is that it is related to an amendment I propose to clause 6. Clause 6 deals with section 63, which relates to delegations to exempt employers. Section 32 allows scales of fees to be set. The advice which I have received, when a person representing the self-insurers saw the Bill, was that the effect of the amendment in clause 6 would be to deny self-insurers the opportunity to use the scales of fees set by the WorkCover Corporation. There is no complaint about the desirability of self-insurers to use those scales, but the argument is in relation to clause 6 and the

reference to the deletion of a power of delegation under section 32 (la)(a) so that the self-insurers would not be able to use the scale of fees. This is not designed to do anything more than put it beyond doubt that self-insurers can use the fees. I move:

Page 1, line 17—After 'amended' insert:

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(a) by inserting 'under subsection (9)' after 'in the *Gazette*' in subsection (1a)(a);

and

(b) [The remainder of clause 3 becomes paragraph (b).]

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

The Hon. C. J. Sumner's amendment carried; the Hon. K.T. Griffin's amendment carried; clause as amended passed.

Clause 4—'Determination of claim.'

The Hon. I. GILFILLAN:. I move:

Page 2, lines 1 to 8—Leave out subsection (7) and substitute new subsections as follows:

(7) The corporation may, in an appropriate case, by notice in writing to the worker, redetermine a claim.

(8) The redetermination of a claim does not give rise to any right on the part of the corporation to recover from the worker money paid under a previous determination unless the previous determination was made in consequence of the worker's fraud.

The clause currently provides:

(7) Where—

(a) the corporation makes a determination on a claim under this section; and

(b) the corporation is subsequently satisfied that the worker is entitled to a level of benefit which is higher than the level provided by or under that determination, the corporation may redetermine the claim in order to provide for the higher level of benefit.

I do not see any reason to suggest that, if there is to be a redetermination, it will be only where it is discovered to be giving a higher benefit to the worker. Fair is fair; accuracy is accuracy. If there has been a miscalculation or misdetermination, or there is justification for redetermination, I believe it should apply evenhandedly.

My amendment carries two qualifications. It protects the worker from the concern or the fear that money may be reclaimed in future. Yet, on the other hand, it does not protect the criminal—because that is what one calls a worker who exercises fraud to misappropriate money; it is a form of theft—and I see no reason why that person should be protected from recovery on the strength of a redetermination. I commend my amendment to the Committee.

The Hon. C.J. SUMNER: The Government opposes the amendment, which would allow the corporation or an exempt employer to redetermine a claim at any time, including the rejection of a claim after it had originally been accepted. This would mean that workers would have no certainty as to the status of their claim. Accordingly it is considered to be unfair and the Government opposes it.

The Hon. J.F. STEFANI: The Opposition supports the amendment. I think there is merit in what the Hon. Mr Gilfillan says. It is a principle that applies to wages payments. If an employer pays an individual an excess of wages, they are not recoverable; the employer cannot go to any court or jurisdiction to seek the repayment of those wages. I think it shows again that WorkCover wants to set new parameters in terms of workers' rights. I do not believe that we can support that principle. If the error, the overpayment, is made it is up to WorkCover to wear it. That is what happens in the real world. If an employer overpays an employee, the employee has the right to retain the overpayment. We support the principle that has been put forward. The other factor I support, and we support the principle, is that if fraud is involved obviously it is the only parameter by which recovery should be possible. We support the amendment.

The Hon. T.G. ROBERTS: I hope that the Hon. Mr Gilfillan will make up his mind based on the explanation given by the Hon. Mr Stefani. The question of comparing the overpayment of wages with a challenged claim is different. It is much harder to differentiate—

The Hon. J.F. Stefani interjecting:

The Hon. T.G. ROBERTS: I know; but the explanation the honourable member gave I do not think clarifies the matter at all. It is much harder to differentiate between a challenged claim and calculating the overpayment of wages. That is just a matter of getting out the calculator, knowing the award rate and working out whether a worker is entitled to those payments. But with challenges to claims there is a lot more involved in the assessment of injuries and the determination of claims than just a calculator.

The Hon. I. GILFILLAN: The WorkCover legislation continues to maintain its record of being some of the most difficult, complicated and obfuscated legislation yet conceived, but it is not working too badly. This really is, in essence, a very simple provision in the Bill. This is a Government provision, it is not WorkCover. It is unfair to load WorkCover with this. The Government has recognised that it is useful for WorkCover to redetermine a claim. The Government Bill, influenced I think with a bias towards the injured worker, has said that the only claims that can be redetermined are those in which the reward or the payment to the worker will go up but not down.

My amendment makes it fair and evenhanded so that it is an accurate appraisal and attempts to be accurate in its redetermination. However, it protects the worker from any loss of money paid up to that point unless it was fraud. That was the explanation I tried to make. I notice that the Hon. Julian Stefani is listening very intently to what I am saying because I think that superficially he was not on top of it. I hope that that has helped.

Amendment carried; clause as amended passed.

Clause 5 passed.

Clause 6—'Delegation to exempt employer.'

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

Page 2, line 16—Leave out '(1a)(a),'.

This amendment is consequential on the amendment which has already been carried.

Amendment carried; clause as amended passed.

Clause 7 passed.

Clause 8—'Conditions of appointment.'

The Hon. J.F. STEFANI: I move:

Page 3, lines 21 to 23—Leave out subsection (1) and substitute new subsection as follows:

(1) A review officer is to be appointed for a term of five years and is, on the expiration of a term of office, eligible for reappointment.

It is the Liberal Party's view that the appointment of a review officer should be for a fixed term of five years rather than for an indeterminate term of up to seven years as proposed by the legislation. This amendment provides the review officer with a defined term of employment, thus giving the appointee certainty of tenure in the position. I commend the amendment to honourable members.

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

The Hon. I. GILFILLAN: I do not have any great problem with the amendment. I think five years is a reasonable period of time to have security of tenure, and seven years is stretching it a bit far. I would be interested to hear whether the Attorney wants to argue vigorously the reason why it should be seven. I think five years is adequate.

Amendment carried.

The Hon. J.F. STEFANI: I move:

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

(3a) The chief review officer cannot be removed from office under subsection (3) (c) except with the concurrence of the President of the tribunal.

The Liberal Opposition believes that the chief review officer of the tribunal should retain the independence of the review system and that therefore the position should be safeguarded by providing that the chief review officer cannot be removed from office without the concurrence of the President of the tribunal. The Opposition considers this position to be one of high integrity and importance in terms of its independence which it should retain.

The Hon. C.J. SUMNER: The Government opposes the amendment. This proposition would put the President of the tribunal in a difficult position and is not considered necessary. The chief review officer would have protection through the courts if he were to be removed other than in accordance with the provisions of subsection (3) of section 77c—conditions of employment.

The Hon. I. GILFILLAN: I oppose the amendment. The chief review officer is appointed by the Government, and I see no reason why the situation should not remain as provided in the Bill.

Amendment negatived.

The Hon. J.F. STEFANI: I move:

Page 4, lines 4 and 5—Leave out ', subject to the general direction of the Minister,'.

The Opposition believes that if the position of the review officer is an independent position there should be no provision for such a position to be under the general direction of the Minister.

The Hon. C.J. SUMNER: The Government considers it necessary for the chief review officer to be subject to the general direction of the Minister to ensure that reviews are undertaken in an efficient and expeditious manner to minimise backlogs in reviews. The direction from the Minister only applies to the administration of the business of the review panel; it does not apply to determinations in relation to particular matters.

The Hon. I. GILFILLAN: I oppose the amendment. It is preferable that there be a general direction of the Minister in this somewhat limited area of administration of the business of the review panel than the alternative which would be that the chief review officer would be under some form of influence by WorkCover. I believe that this measure is the best option that is available to us to attempt to keep the chief review officer free from direct pressure from or influence by WorkCover.

Amendment negatived; clause as amended passed.

Clauses 9 to 12 passed.

Clause 13—'Costs.'

The Hon. J.F. STEFANI: I move:

Page 5—

Line 18—Leave out 'subsections' and substitute 'subsection'.

Line 22—Leave out 'Minister' and substitute 'President of the Tribunal'.

Lines 24 and 25—Leave out subsection (5b).

These three amendments are linked. The cost of preservations before the review committee is a major issue for the Parliament. During the second reading debate, Opposition members raised the issue of costs. We in this Chamber do not wish to rehash the presentations and submissions that were presented in debate in another place. However, we believe there are major consequences in terms of the proposals put forward by the Government and the flow-on provisions. I commend the amendments to members.

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

Page 5, line 20—Leave out 'neither charge nor seek' and substitute 'not, without the agreement in writing of that person, charge or seek'.

This is related to the amendments already before the Committee. I spoke on this matter at length during the second reading debate. In relation to the Environment, Resources and Development Court Bill—which we dealt with, I think, yesterday—which deals with planning in particular, there is a jurisdiction that is meant to be undertaken with relative informality and where fees are generally supposed to be kept to a minimum. The Minister responsible for the Bill in this Chamber moved an amendment that would accommodate a position where there was a scale of fees. Under the Bill, it was first proposed that the scale of fees would be fixed by regulation, but the Council subsequently agreed that they should be fixed by rules of the new court. Also, if a party came to an agreement in writing with his, her or its representative, other fees could be charged.

All that our amendments seek to do is to reflect that package. I think it is quite unreasonable for the Minister to be fixing the scales. It means that they are not reviewable in any way at all. They are published in the *Gazette* and they are binding. No representative can then charge or seek to recover anything in excess of the scales published by the Minister. The Minister must consult with the Crown Solicitor, but so what? The Crown Solicitor has an interest, in the sense that the Crown Solicitor frequently is representing a party before the relevant review authority which may be the tribunal. So the scenario which together the Hon. Mr Stefani and I are proposing is scales set by the President of the tribunal; then it is not necessary to consult with the Crown Solicitor; and also to allow an agreement to be made, which would enable some charge other than the scale to be made. In particular, self-insurers are concerned about the issue of the scale because they do want to be able to pay more if they believe it is appropriate to do so. I would have thought that

WorkCover might want to be in the same position, but it would be bound by the proposal.

The President of the tribunal is the appropriate person: that person is the Senior Judge of the industrial jurisdiction and, as I argued yesterday regarding the Environment, Resources and Development Court, is well equipped to deal with the issue of costs. In fact, in every other jurisdiction costs are fixed by rules set by the respective court, and in all cases there is discussion with all parties, including the Government. It seems to me to be the fairest way to address this issue. At the appropriate time I will move my amendment, which is part of the package.

The Hon. C.J. SUMNER: The Government opposes these amendments. We think the most appropriate course is for the Minister to set the fees.

The Hon. I. GILFILLAN: I oppose the amendments. There is not much point in my going into a detailed discussion, except to say that I believe that the Minister is more appropriate than the President of the tribunal. For some time the Act has provided that the party who is being represented is entitled to be reimbursed to an extent prescribed by regulation for the costs of the proceedings. Although those regulations can be challenged, they are invariably set by the Minister, and I believe that that is the appropriate course to maintain.

The Hon. K.T. GRIFFIN: As I understand it, they are no longer fixed by regulation but by the Minister and they are not subject to review. That is what my amendment proposes.

The Hon. I. GILFILLAN: I am making the point that by regulation is virtually the same as by the Minister. The tribunal does not have anything to do with it.

The Hon. K.T. Griffin interjecting:

The CHAIRMAN: Order!

The Hon. K.T. GRIFFIN: Mr Gilfillan said regulation is not much different from the Minister, but the Hon. Mr Gilfillan has been here long enough to know that we have argued frequently about proclamations and regulations. In fact, we have done it on several occasions this week. His colleague the Hon. Mr Elliott agreed in terms of the Environment, Resources and Development Court Bill to move from proclamation to regulation. At least if the matter were fixed by regulation, it would at least be reviewable. If the Minister just publishes a scale in the *Gazette*—take it or leave it—it is not subject to review.

I was arguing in support of my colleague the Hon. Mr Stefani that having it fixed by the President is the appropriate way to go. If the Hon. Mr Gilfillan is not happy with the President doing it, maybe we could find some other mechanism, either by regulation or rules of the tribunal, but I suggest that it is critical that there be some mechanism for reviewing the scales independently of WorkCover and the Minister.

Amendments negatived.

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

Page 5, line 20—Leave out 'neither charge nor seek' and substitute 'not, without the agreement in writing of that person, charge or seek'.

This amendment allows an arrangement between the parties: if they both want to charge and pay more, they can agree that in writing. That is the normal practice. I cannot see that there is any prejudice in that respect in regard to employers or WorkCover.

The Hon. BARBARA WIESE: The Government opposes this amendment as it will allow representatives before a review authority process to charge or seek to recover amounts in excess of the prescribed rate if they can obtain the agreement of the client. This undermines the intent of the Government's Bill to contain the costs of representation and to protect the worker from costs of representation in excess of the prescribed rate.

The Hon. I. GILFILLAN: I have not had that amendment to consider, so I am not in a position to give an opinion. I ask the Hon. Trevor Griffin to explain it.

The Hon. K.T. GRIFFIN: I will deal with the amendment in a little more detail. The Bill seeks to provide that under no circumstances can a representative of a person in proceedings before a review authority, which might be either a review officer or the tribunal, charge more than the scale fixed by the Minister. That does not take into consideration the fact that there may be different levels of complexity of matters being addressed. The usual arrangement is that, if a self insurer, for example, wishes to engage a representative in a particularly complex matter and pay more than the amount prescribed by the Minister, that self insurer, by virtue of the operation of clause 13 of the Bill, is not able to make any further charge. So, it may affect the quality of the advice and representation.

The Committee has now agreed that the scale be fixed by the Minister, and I propose that, if a representative and the client agree in writing, some other fee might be charged in relation to the representation, and that will take into account complexity and time and so on: the charge may be made.

The Hon. I. GILFILLAN: All is clear to me now. I expect that that amendment would undermine the purpose of the clause and therefore I oppose it.

Amendment negatived; clause passed.

Clause 14—'Application for review.'

The Hon. BARBARA WIESE: I move:

Page 5, after line 28—Insert new paragraph as follows:

(ab) by striking out from subsection (2)(da) 'or reduce'; and.

The amendment is consequential on the change in relation to the provider's right of review.

The Hon. I. GILFILLAN: I move:

After line 28—Insert new paragraph as follows:

(a) by inserting '(including a decision in the nature of a redetermination of a claim)' after 'compensation' in subsection (2)(a); and.

This is consequential on my earlier successful amendment.

The Hon. Barbara Wiese's amendment carried; the Hon. I. Gilfillan's amendment carried; clause as amended passed.

Clause 15 passed.

Clause 16—'Transitional provision.'

The Hon. J.F. STEFANI: I move:

Page 6, line 28—Leave out 'seven' and substitute 'five'.

This is consequential on an earlier successful amendment.

Amendment carried.

The Hon. BARBARA WIESE: I move:

After line 31—Insert new subclause as follows:

(7) Proceedings cannot be instituted before a review officer after the commencement of section 3 of this Act in respect of any decision of the corporation under section 32 (4) of the principal Act before that commencement.

There is a transitional provision dealing with the changes to the provider's rights of review as discussed earlier. This provision will effectively remove the provider's right to seek a review from the date of assent of this Act. However, where proceedings have been commenced prior to the date of assent the matter will be dealt with under the current arrangements.

The Hon. I. GILFILLAN: I support that amendment.

Amendment carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

OCCUPATIONAL HEALTH, SAFETY AND WELFARE (REGISTRATION FEES) AMENDMENT BILL

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Registration of employers.'

The Hon. J.F. STEFANI: I move:

Page 2—

Line 23—Leave out '$3 349 000' and substitute '$3 050 000'.

Line 25—Leave out '$80 000' and substitute '$50 000'.

Line 28—Leave out '$3 269 000' and substitute '$3 000 000'.

I am sorry that my amendment has been circulated somewhat late. It seeks to reduce to $3 050 000 the figure set by legislation at $3 349 000. It is an arbitrary reduction that I seek to make in times of falling employment, and certainly with a lot of businesses going bankrupt I feel it is appropriate that we, in Parliament, should consider the position. It is a gesture more than anything else that I seek to move for a reduction in the registration fees. The Government clearly is the beneficiary of more than $300 million to $400 million a year from employers, and I would have thought that in its approach to encouraging employers to employ more people the Government should easily fund the operation of the Occupational Health and Safety Commission from general revenue.

Certainly, there has been a greater take over a long period of time, namely, the three years that this system has been operating. I fought vehemently to have their fees kept at a reasonable level because, after all, it is only a measure of identifying where workplaces are registered.

The function of the Occupational Health, Safety and Welfare Commission should very much have been enshrined in WorkCover, where employers are already paying fees for insurance and accidents, and I consider that the approach to registration should be purely a function to identify workplaces and essentially to allow the Government to have some idea and concept of the various businesses registered in this State. I consider that like WorkCover we should be aiming to reduce fees rather than increase them, and with that in mind I have moved my amendment.

The Hon. BARBARA WIESE: The Government opposes this amendment. The reason for having the figure in the legislation at all is to provide some certainty for employers. As I understand it, this has been the case under this formula that is used for determining the amount of money to be collected. As I understand it, in the past few years the revenue has been down from the target set. This year it happens to be up a little, but it is appropriate that the amount be set. As I understand it, in future years it will be set by regulation, and it is considered to be a reasonable amount of money: it is last year's fee plus 1.7 per cent for inflation. The Government does not accept the arguments that have been put by the Hon. Mr Stefani, although we too have a keen interest in keeping the costs to business down. In this case it is considered that the target that is being set is reasonable under the circumstances.

The Hon. J.F. STEFANI: The Minister has stated that the Government is conscious of keeping the costs down and that the increase has been very marginal. I would like to refer to some figures. In 1991-92, 56 245 employers paid $2.6 million for registration fees. The expected figure for the period 1 July 1992 to 30 June 1993 will be in excess of $3 million, paid by 56 274 employers. This is no small increase; it represents a very large increase. If my arithmetic serves me correctly, I would suggest that it represents an increase of more than 20 per cent. It is outrageous, therefore, that when we have falling employment numbers and businesses going to the wall struggling employers throughout South Australia should be asked to meet an impost of that nature and size.

I honestly believe that, if the Government were serious about keeping increases within the CPI, the increase would be far less than that proposed. It is quite staggering to think that registration fees have risen from $1.6 million in 1989-90 to $3 million—that is double the figure—in three years. It is just outrageous for this sort of increase to occur. Admittedly, 42 000 employers were registered in 1989-90 and we now have 56 000, but proportionately the increase has been quite staggering.

I hope that the Hon. Mr Gilfillan will see that I am trying to get a moderate approach to this matter by giving the right signal to employers that Parliament is conscious of their plight. Indeed, we are conscious of the plight not only of the employers but of employees who are losing their jobs. We want them to understand that Parliament is conscious of their plight and that, as a gesture, we will endeavour to reduce the impost on employers and employment.

The Hon. I. GILFILLAN: I oppose the amendment. I should like to express my appreciation for what I believe to have been a very well presented case by the Hon. Julian Stefani. That may be sorry consolation for him, but it is important to recognise that he has extracted significant figures and data and has presented them extremely well. If it were a question of my being influenced by a mathematical balancing of dollars and employers and a general crescendo of costs, I think it would be very persuasive.

I recall arguing strenuously with the then Minister, the Hon. Frank Blevins, that the occupational health, safety and welfare legislation should be dealt with at the same time as, cognately with, the workers compensation

legislation. It may be that I was in a minority, but I believed that the money and energy efficiently put into occupational health, safety and welfare would be the most effective way of reducing the cost of workers compensation. There was a gap between the workers compensation legislation and the occupational health, safety and welfare legislation. At that time the revenue for the occupational health, welfare and safety work was tied to the workers compensation premiums. As we have been successful in reducing the workers compensation premiums, it is not sensible to reduce the investment in occupational health, safety and welfare. Therefore, they should be detached and, in the case of premiums going down, go their own merry way.

I was advised that there is a serious gap between the expenditure on areas embraced by occupational health, safety and welfare—my recollection is that it was said to be over $5 million—and the actual revenue received from the levies. In fact, the general revenue paying community of South Australia is making a substantial contribution to expenditure on occupational health, safety and welfare as it is at this stage.

Another reason which persuades me on balance to oppose the amendment is that in the Bill we have the capacity to disallow a regulation, which would have the effect of freezing. If, in retrospect or on closer analysis, we believe that the amount is excessive or that a proposed regulation is increasing the amount excessively, this Parliament would have the power to stall the figure at the amount set in the Bill as at this year. Certainly I would be very critical in looking at the costs and the justification for them. It is interesting to note that it does not look as though it will be allowed to be indexed.

The Hon. J.F. Stefani interjecting:

The Hon. I. GILFILLAN: What I am saying is that, if the regulation setting the prescribed amount for each succeeding financial year is disallowed, it reverts to the amount for the previous year. I do not believe there is any CPI index on that. We have that opportunity to stop any galloping increase. On that basis, I think we can have some confidence that the money is being properly spent. As a member of Parliament I shall certainly be looking at that more critically to see whether we are getting value for our dollar.

Certainly, the intention of the legislation and my intention is that it is to be used to minimise the injury, ill health and risk that applies to occupations in South Australia. If it is being spent reasonably efficiently for that, I consider it money well spent.

The Hon. J.F. STEFANI: I have a number of questions to put to the Minister. How many people were employed by the Occupational Health and Safety Commission in 1989-90, 1990-91, 1991-92 and 1992-93?

The Hon. BARBARA WIESE: I do not have the figures for all those years with me. I understand that there are 17 people employed at the moment and that there have never been any more than that figure. If those numbers are required for previous years, I can provide that information at a later time.

The Hon. J.F. STEFANI: Yes, I would appreciate the Minister's providing those numbers for me. What is the current total expenditure in respect of the employment of the 17 people and what is the budget projection for 1993-94? 1 refer to the total cost of operating the Occupational Health and Safety Commission for 1993-94.

The Hon. BARBARA WIESE: For this current financial year the all-up operating costs for the commission have been $1.039 million, of which $861000 comes from consolidated revenue. The remainder is revenue generated through interest and other things. As for the projected operating budget for next year, I am not able to indicate that at this time. It has not yet been determined.

The Hon. J.F. STEFANI: I asked the Minister for the commission's total operating cost.

The Hon. Barbara Wiese: Yes.

The Hon. J.F. STEFANI: Then why on earth are we seeking to approve $3.3 million?

The Hon. BARBARA WIESE: Mr Chair, as I understand it, the amount of money required covers the Department of Labour inspectors for occupational health and safety, as well as the occupational health division, which includes medical and technical research officers. Those two respective areas have budgets of around $3 million and $1.2 million respectively. So, we are not just dealing with one small area here in terms of the overall budget; we are talking about these areas of activity as well.

The Hon. J.F. STEFANI: Could the Minister advise—and I know that she may not be able to provide that information now, but if she could get it for me—the number of inspectors that have been employed in the years 1989-90, 1990-91, 1991-92 and 1992-93; the amount the commission has paid for professional services in terms of medical research and other specialist areas of operation; and payments which have assisted the commission to develop codes of practice and other things for the last two years? That will give me some feel of where the budgetary lines are going.

The Hon. BARBARA WIESE: I can indicate that currently there are 36 inspectors employed. I do not have the figures for previous years, but I will provide those later, as well as the additional information that the honourable member asked for.

Amendments negatived; clause passed.

Title passed.

Bill read a third time and passed.

EDUCATION (TRUANCY) AMENDMENT BILL

Adjourned debate in Committee (resumed on motion).

(Continued from page 2403.)

The Hon. R.I. LUCAS: When the Committee last met I had moved the amendment standing in my name to remove the section of the Bill which provides that any member of the teaching service would be an authorised officer for the purpose of handling the truancy problem. We were then going to return to the position where only authorised officers, authorised in writing by the Director-General of Education, would have that particular responsibility. I intend to continue with the amendment and I anticipate that that will be supported by members in this Chamber.

The point which was raised by the Hon. Mr Elliott and on which there was an indication of agreement by the Attorney-General and me when last we met has now been resolved in further discussion with the Hon. Martyn Evans and other representatives of the Government. The scheme of arrangement is that the apprehending powers under subclause (2)(b) will now be restricted to members of the Police Force. So, authorised officers will be able to approach suspected truants and ask their name and address but it will only be that subsection of authorised officers who are members of the Police Force who will then be able to go the next step (which was the step the Hon. Mr Elliott and others expressed concern about) of taking suspected truants into custody and returning them to a school or to a parent's or guardian's home.

This resolves many of the problems that the Hon. Mr Elliott and others raised. I concede that it does not solve all of them, but I do not believe there is a solution to the problem where someone—a paedophile—seeks to represent or pass himself off as a CIB officer and approaches a suspected truant, takes the suspected truant into custody and takes them home or back to school. That is a problem that exists at the moment (I think we concede it any way) and it will be a problem that still exists even after these amendments are enacted.

I agree with the view that has been put by the Hon. Mr Elliott that this at least tightens it a bit further. We cannot resolve every problem but I believe we have gone as far as we can. I understand that the Hon. Mr Evans and the Minister in charge of the Bill in this Chamber will agree with this for the moment, and if there is to be a further step we can consider that in the August session of the Parliament. I urge support for my amendment and the subsequent amendment which is to be moved by the Minister and which I will be supporting as well.

The Hon. M.J. ELLIOTT: I am pleased that we now have not just this amendment that we are about to vote on but the subsequent amendment. I felt that precluding schoolteachers was not enough. While the numbers appeared to be here previously for the Bill to have allowed any person who is an authorised officer to apprehend a child and take them back to school (which had all the potential problems that I raised when we discussed it earlier), I think it is a reflection on this place that we took the time to take a further and closer look at it. We will now see an amendment which provides that the only authorised officer who can take a child into his or her custody is a member of the Police Force. That largely but not totally alleviates the concerns that I raised earlier. I am pleased to support this amendment and the subsequent amendment.

Amendment carried.

The Hon. BARBARA WIESE: I move:

Page 2, line 2—After 'an authorised officer' insert 'who is a member of the Police Force'.

This amendment makes provision for a member of the Police Force to be the authorised officer who is able to apprehend truants.

Amendment carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

HERITAGE BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 2370.)

The Hon. M.J. ELLIOTT: I support this Bill, to which I will be moving a number of amendments during Committee. The Democrats have been long time supporters of the need to protect the State's heritage. Heritage buildings are the tangible monuments of our society's past. Preserving them preserves a sense of place of purpose in the city, suburbs and country towns. They provide continuity to the story of the State's development. I doubt that many would disagree with that. The issue of heritage protection is often hotly debated. The debates tend to centre on the requirement by legislation of one individual to do or not to do something on behalf of the whole community; it is the argument over perceived loss in value coming from heritage listing and the costs often involved in maintaining or restoring an old building.

I am a firm believer, as with native vegetation, that that requirement should not become an unfair burden. I supported the scheme whereby farmers were paid compensation for tracts of native vegetation left uncleared on their properties, and I support incentives for owners of heritage places. These incentives can take many forms—from the grants handed out now to allow certain work to be done to other financial measures such as relief from council rates, and special electricity and water rates. Regulatory dispensation can also be used—schemes such as transferable development rights to recover some of the loss in value in a place not being able to be developed. Adelaide City has had a scheme operating with building heights, allowing floors to be sold from one part of the city to another. Its lack of success has been that the allowable heights have been set too high across the city thereby dampening demand for the transferable floors.

I support the move in this Bill towards a more autonomous State heritage authority and the handing of the administration of the register to this authority. Certificates of exclusion are a good idea as they should take some of the uncertainty out of the system for building owners who are worried about potential interference with their plans by the heritage laws. Some issues which cause me concern however will be the subject of amendments later. They will allow for the calling of public nominations for members of the authority—a process which I believe will see a wide range of suitably qualified individuals identified for the Minister to make a choice.

The authority should have several additional functions stated in this Act: to intervene if a local council is not meeting its obligations to manage heritage places/areas; and to encourage and promote incentives other than financial assistance to all levels of government. The procedure for removing items from the register needs to include a few more checks and balances. The Minister's decision should be subject to the scrutiny of Parliament in the same way as regulations, and prior to the removal of an item from the register. Notice should be sent to all interested parties. That should include the local council

of the area in which the item is located, the person who originally nominated the place for heritage protection and the groups and individuals who made submissions during its assessment prior to inclusion. The Democrats support the second reading.

Bill read a second time.

In Committee.

Clauses 1 to 3 passed.

Clause 4—'Authority.'

The Hon. ANNE LEVY: I move:

Page 3, line 7—Leave out 'The members' and insert 'Seven of the members'.

I understand that this is the first of three amendments which were in fact all moved by the Opposition in another place. They were not accepted but, whilst not opposing them in principle, the Minister wished to consider the wording of the amendments and he undertook to have me move them in this place with wording that is considered more desirable by Parliamentary Counsel.

The Hon. DIANA LAIDLAW: The Liberal Party supports the first amendment and we thank the Government for reconsidering this matter after it was debated in the other place. It was certainly requested by the Local Government Association in correspondence to the shadow Minister, and I am pleased that the Parliament as a whole will be accepting its representations.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 3, line 9—After 'field' insert 'and the other member must be a person with knowledge of or experience in heritage conservation nominated by the Local Government Association and approved by the Minister.'

This is the second of the package of amendments, the effect of which is to maintain the same number of members on the authority but to enable one of those members to be nominated by the Local Government Association.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 3, after line 9—Insert:

(3a) Before filling a vacancy in the membership of the Authority, the Minister must, by advertisement published in a newspaper circulating throughout the State, invite interested members of the public to submit (within 14 days of the advertisement) the names of persons whom they regard as suitable candidates to fill the vacancy.

This is quite a simple amendment allowing for the calling of public nominations for members of the authority. It in no way limits the Minister's discretion but gives interested parties the potential to nominate people for the authority. That is not a bad thing. I have known of a number of occasions when Ministers have been wishing to fill positions, and I have even been approached by Ministers asking whether I had any suggestions for someone for a particular position.

The Hon. Diana Laidlaw: Is that right?

The Hon. M.J. ELLIOTT: Only on the odd occasion, but it does happen. That aside, I am sure sometimes there are closed circles that people move within, and they try to find the nominees within them. Occasionally someone who is highly suitable for a job is not thought of or is not approached for some reason or another. The public nomination process gives the capacity for those names to be put forward. The Minister's discretion remains unfettered.

The Hon. DIANA LAIDLAW: The Liberal Party supports the amendment. I note also a very similar amendment was incorporated in the Development Bill with respect to the seeking of nominations for all positions, other than from the Local Government Association. Because of the distinction in the Development Bill where the Local Government Association position was not one for which the Government would seek public nominations, I am not sure whether the Minister wants to accept this amendment in the current form, or in an amended form after having deleted any reference to nominations being sought from people with local government experience.

The Hon. ANNE LEVY: I feel in somewhat of a quandary. I certainly do not oppose the principle which is being enunciated here, that by public advertisement there should be the opportunity for people to put forward their names or to put forward the names of other people whom they think would make good members of the authority. In fact, in the arts we do this constantly for most of our arts advisory committees. So, in that respect, I am certainly happy with the principle. However, as the honourable member has said, presumably this is to apply to the seven members who are appointed through the Minister. Rather than say it does not apply to those appointed by the Local Government Association, perhaps it should also be written into the Act that the LGA should call for nominations from interested people in the local government community before they select their nominee to the authority. Likewise within local government circles, there may be people who would like to put forward their names and from whom the LGA could select its representative. That would seem to me the balanced way to proceed, rather than indicating that it only applied to those appointed by the Minister and that the LGA did not have to go through the same procedure.

The Hon. M.J. ELLIOTT: I appreciate what the Minister has said, but at least the LGA is representative of a particular group and it does have particular networks. It is representing a narrow interest.

The Hon. Anne Levy: There are thousands—

The Hon. M.J. ELLIOTT: That might be worth pursuing, but I do not think this amendment will create problems. All the Minister is really saying is that she would like to take it a bit further, if anything. Six of the seven people are going to be appointed by the Minister and all this is doing is making sure there are six nominees. They could possibly come from public nominees but they need not do so.

The Hon. ANNE LEVY: We will support this amendment but will work out an amendment which can be moved in the other place, rather than wait for an amendment to be drafted for moving here.

Amendment carried; clause as amended passed.

Clause 5—'Functions of authority.'

The Hon. M.J. ELLIOTT: I move:

Page 3, after line 29—Insert:

(f) to encourage all levels of Government to provide incentives (apart from financial assistance) for heritage conservation;

(g) if, in the opinion of the authority, a council is not acting appropriately with respect to heritage conservation of places within its area—to assist the council to do so.

The effect of this amendment is to include several additional functions of the authority. The first is to intervene if a local council is not meeting its obligations to manage heritage places or areas. The second is to encourage and promote incentives other than financial assistance to all levels of Government.

The Hon. DIANA LAIDLAW: I support the amendment. I noted at some length in my second reading speech that the Liberal Party is keen to see Government at all levels address this issue of incentives for people who have heritage listed properties, because we believe that the heritage legislation should not only provide controls and restrictions but should provide encouragement. This amendment would seek to give an advocacy role for the authority in this regard.

The Hon. ANNE LEVY: The Government opposes this amendment. The Government considers that it is quite unnecessary to insert paragraph (f) into the Bill as it is already covered. This is not giving a function to the authority which it does not already have. Clause 5, relating to the 'Functions of Authority', we see that subpargraphs (iv) and (v) provide:

Providing advice to the Minister in relation to—

(iv) any matter relating to the conservation or public use of registered places or State Heritage Areas;

(v) any other matter relating to heritage conservation;

It is not necessarily to pick out this particular aspect when so many others could be picked out. It is not necessarily to put this in the legislation to enable the authority to carry out that function if it feels it desirable. It has all the powers available to do it.

With regard to subparagraph (g), again I think that clause (5) (d)(iv) and (v) already cover this matter quite adequately, apart from which I think to put such wording in the Bill would be highly offensive to local government. It is presupposing that a council is not going to act appropriately. It may well be that some councils are not going to act appropriately, but I do not think we should word our legislation in such a way that we imply that we are expecting them to do this—

The Hon. M.J. Elliott: So we don't have laws against murder.

The Hon. ANNE LEVY: —particulary as there are plenty of laws to enable the authority to act, should that occur, without having this offensive phrase in the legislation. It is not equivalent to saying that there should not be laws against murder because there are ways of preventing this occurring should it occur under the existing legislation. It is unnecessary to add this phrase, which will be regarded as highly offensive by local government.

The Hon. DIANA LAIDLAW: I support the amendments.

Amendment carried; clause as amended passed.

Clause 6 passed.

Clause 7—'Proceedings of Authority.'

The Hon. ANNE LEVY: I move:

Page 4, after line 20—Insert:

(5) Meetings of the authority must, subject to subsection (6) be held in a place that is open to the public.

(6) The authority may order that the public be excluded from a meeting in order to enable the authority to consider in confidence any matter that it considers to be confidential or if it considers that exclusion necessary to protect a place that is or may be of heritage value.

(7) The minutes of meetings of the authority must be available for public inspection without charge.

This expresses a principle which has been agreed in another place, although the wording was not there agreed. It deals with the openness of the proceedings of the authority.

The Hon. DIANA LAIDLAW: I note that the Liberal Party had moved amendments with almost the same wording in the other place, and I note that the Minister at the time indicated that he would like to seek more advice on the matter. He rejected the amendments at that time and has since sought that advice. I am pleased to see that in following such advice in this place the Minister has seen fit to try to introduce such amendments. They are important in winning community confidence for the whole heritage process by having such meetings as appropriate open to the public.

Amendment carried; clause as amended passed.

Clauses 8 to 15 passed.

Clause 16—'Heritage value.'

The Hon. M.J. ELLIOTT: I move:

Page 7, line 7—Insert ', scientific or environmental' after 'cultural'.

I am seeking here to provide that places which may be considered for heritage value might also be considered to be areas of scientific or environmental significance and not just cultural. It is just to make sure that we pick up everything that we should. Some aspects of scientific interest may or may not be picked up by natural history. If, for instance, I take areas that have been affected by glaciation such as down at Hallett Cove, it may be an area considered of scientific interest that may or may not be picked up by national history. I want to be confident, and that is just one of a number of examples. Places which may be of scientific or environmental significance need to be able to be picked up by this Heritage Act.

The Hon. ANNE LEVY: The Government opposes this amendment. The use of the word 'scientific' is really unnecessary because the sentiments are already covered in the criteria. Clause 16 (c) provides:

A place is of heritage value if it satisfies one or more of the following criteria:

(c) it may yield information that will contribute to an understanding of the State's history, including its natural history;

By 'natural history' is meant something of geological, botanical or zoological importance. In other words, it is covering the scientific aspects which the Hon. Mr Elliott is suggesting. It is not that we oppose the use of the word 'scientific'; we are just saying that it is not necessary because it is already covered.

The other criterion which the Hon. Mr Elliott is suggesting is environmental. I oppose this, as it seems to me that this is an attempt to shift the focus of the Bill away from the cultural environment to the natural environment, and that is not the function of this Bill. This Bill is not concerned with the natural environment. It involves very much the cultural environment, and environmental matters are covered in other legislation

which this Parliament has considered. I do not think it should be inserted in this Bill but can be adequately catered for elsewhere.

The Hon. DIANA LAIDLAW: I endorse the explanation given by the Minister in response to this amendment and will not support the amendment.

Amendment negatived; clause passed.

Clause 17—'Proposal to make entry in Register.'

The Hon. M.J. ELLIOTT: I move:

Page 7, after line 27—Insert:

(2a) The Minister may direct the authority to enter a place provisionally in the Register.

I am seeking to have the ability, if there is a nomination for listing, to have some interim protection applied. The Minister having power to enter a place on the Register provisionally for an assessment to be carried out objectively achieves that aim.

The Hon. ANNE LEVY: The Government opposes this amendment. The Heritage Act gives a great deal of power to the Minister to put things on lists, to take action in various circumstances, and so on. The new Act results from a lengthy process of consultation and review as to what should be in it. One of the comments on the present legislation from a very wide circle of people was that the Minister had too much authority. In consequence, this Bill seeks to reduce the involvement of the Minister in such decisions, to give the power to the authority, and, in emergency situations, to enable the authority to delegate its power to one of its members to act rather than have ministerial involvement. I am surprised at the Hon. Mr Elliott's amendment, because it seems to be contrary to the whole thrust of the Bill, which is to remove the political component and to give it to a much more expert authority.

The Hon. DIANA LAIDLAW: The Liberal Party will not be supporting the amendment. I note in passing that nothing ever ceases to surprise me in this place. It is interesting to see a Minister refusing to accept powers that have been offered by anybody.

The Hon. Anne Levy: We believe in consultation.

The Hon. DIANA LAIDLAW: Yes, I know, but it is so amusing to see a Minister give up powers. Often in this place, particularly in relation to heritage and development matters, there is criticism about ministerial discretion. I am aware that provisional listing is one such area that has been deliberately addressed in the Bill following consultation with the community. The Liberal Party will reject the amendment because it seeks to take responsibility for listing away from the authority and is at odds with clauses that we have just passed relating to the powers and functions of the authority.

The Hon. M.J. ELLIOTT: In general, I like to see ministerial powers limited, and I attempted to do that through the Development Bill. I do not have a great problem with a Minister who may intervene with an interim or provisional effect to save something; but when a Minister has the power to go in and destroy or to do something that cannot be reversed then I have great concern. I am trying to be consistent with my view about the way that powers can or should be used. As I do not have the numbers, I shall not further pursue the matter.

Amendment negatived; clause passed.

Clause 18—'Submissions and confirmation or removal of entries.'

The Hon. M.J. ELLIOTT: I move:

Page 8, after line 33—Insert:

(5a) A direction by the Minister under subsection (5) must be laid before Parliament and is subject to disallowance in the same way as a regulation.

(5b) If the Minister directs the removal of a provisional entry from the Register, the authority must remove the provisional entry on the expiry of the period during which the regulation directing the removal may be disallowed.

This amendment seeks to achieve a situation where, before anything is removed from the register, it should be done via a process similar to regulation, and it will then be subject to disallowance by either House of Parliament. This relates to a situation where a Minister, under subsection (5), seeks to remove something from the register.

The Hon. ANNE LEVY: The Government opposes this amendment, because it will turn a simple procedure into a very complicated one. I point out that the Minister is accountable publicly through the Parliament and, as far as I know, nobody denies or queries the fact that Ministers are publicly accountable.

The Hon. M.J. Elliott interjecting:

The Hon. ANNE LEVY: Well, it seems to me that this can delay things unnecessarily. Under section 18 (5), the Minister must consult the authority so that the authority's views in this regard are taken into account. The authority has been set up to provide advice on these matters. For example, everyone on the authority may be agreed that an item should be removed from the register for a whole lot of—

The Hon. M.J. Elliott: They don't have to agree. It is just 'after consultation'. They do not have to agree at all.

The Hon. ANNE LEVY: Yes; but one could imagine a situation where what the honourable member is proposing will lead to inordinately great delays in doing something about which everyone is perfectly happy.

The Hon. M.J. Elliott interjecting:

The Hon. ANNE LEVY: I ask for your protection, Madam Acting Chair. The Hon. Mr Elliott will persist in interjecting.

The ACTING CHAIRPERSON (Hon. Carolyn Pickles): Interjections are out of order; the Minister does not have to answer them.

The Hon. ANNE LEVY: No, but I am trying to argue a case on a matter on which I am representing another Minister. One could imagine a situation where agreement was reached tomorrow that an item should be removed from the register and the authority is happy that it should be removed. The procedure is that the Minister then removes it.

If the Hon. Mr Elliott's amendment is accepted, it will mean that the removal of the entry in the register cannot take place until after 14 sitting days. If Parliament meets again in early August, given the vagaries of the budget and Estimates Committees, it could be the end of September or half way through October before that could take place.

So, we would have a delay of between five and six months before what has been agreed was a provisional entry should be removed from the register. The idea of provisionally placing items on the register is to make sure that they are protected while the proper

examinations occur. When the full examinations have occurred then the decision is made that, either, yes, it is a heritage item which should stay there permanently, or, no, it is not a heritage item and can be taken off.

In that second case, while the interim protection has been provided so that detailed investigations could be made, having made them and decided that the items should not be placed permanently on the register, the owner then is not able to do anything with his property for up to six months because he has to wait that time before the Parliament could but did not disallow the regulation. It is not a question of whether the Parliament does, but the authority cannot remove the entry until the expiry of the period during which the regulation could be disallowed—14 sitting days—which could be up to six months from the time that the owner of the property wants to do something with his property. It is provisionally on the list and everyone agrees it should come off the list, but he still cannot do anything for up to six months.

It is absolutely absurd and is grossly unfair to people who wish to develop their property and who should not be prevented from doing so if there is general agreement that the property is not a heritage one.

The Hon. M.J. ELLIOTT: The Minister is remarkably inconsistent. After arguing very strongly against the Minister having any power to provisionally put something onto the register, the Minister has absolute power to rip anything off without any impediment whatsoever. That is so remarkably inconsistent that it is unbelievable. She says that, if everybody agrees something should come off, then it should come off. Quite plainly, under subclause (6), the authority can decide that something can come off. If everybody includes 'the authority', the authority is able to decide that something should come off. Her argument really does not hold an awful lot of water.

The Minister in fact has a very powerful discretion to intervene at any time and just haul something off the register and there is no answerability to anybody for that decision—no real responsibility. Quite frankly, I am astounded at the remarkable inconsistency that we have seen moving from one amendment to the next. Once the decision is made to haul something off the provisional register, and I would expect it would not be easy to get it on, then one would presume there is a developer in the wings and that building would be lost very quickly following that decision.

The Hon. DIANA LAIDLAW: I accept that on the surface there appears to be an inconsistency between the arguments presented in the Bill and in opposition to the last two amendments introduced by the Hon. Mr Elliott, but I think the circumstances are different. That is the advice that has been given to me in respect to this amendment.

The most important part of this whole process is the fact that there is such wide consultation provided for in the registration process. That is something that I spoke on at some length during my second reading speech, so I will not go through it again, but it is a process that has been developed in consultation with the community and has been widely supported. It does involve many opportunities for the owner and for the community at large. I would hope that in terms of the composition of the authority they would all be members of integrity and, with diligence, would be upholding the sentiments and the terms expressed in this Bill.

Therefore, at this stage I am prepared to put my faith in that process and in the integrity of the personnel on the authority and believe that if that process has been honoured it is appropriate for the powers that are in the Bill to remain as they are at this time, rather than calling in the parliamentary process. There are long recesses in Parliament and I do not think it is necessary to have this amendment because it will cause considerable delays and frustrations and introduce an element of uncertainty which is not what we were seeking in this Bill.

The Hon. M.J. ELLIOTT: I agree with everything the Hon. Ms Laidlaw said, except for her conclusion.

The Hon. Diana Laidlaw: It is late.

The Hon. M.J. ELLIOTT: Yes, I know it is late. You said the authority has a very good process for making decisions. What I object to is that, despite this excellent process they go through and despite the fact that we are trying to put people with great integrity onto the authority, under subclause (5) as it now stands the Minister can just intervene roughshod over the whole authority and say, 'This place has to come off.' The Minister has to consult with but does not have to do what the authority recommends. The authority quite plainly, under subclause (6), has the capacity, on its on volition, to decide whether or not to take something off the provisional register or to proceed further.

The Hon. Diana Laidlaw: Why didn't you move to delete subclause (5)?

The Hon. M.J. ELLIOTT: Drafting, I guess. I knew what the problem was. In fact, I was willing to accept that the Minister might in some circumstances need to intervene, so I was accepting the Minister having some powers in this place, but saying that if the Minister was going to do that it should be subject to parliamentary review. Ultimately, I believe that the authority is the body that should be making these decisions. If, in exceptional circumstances, the Minister intervenes, there needs to be some check and balance in relation to the Minister carrying out this unusual action—and it should be an unusual action. It is consistent with the sorts of things I was trying to achieve in the Development Bill. If you set up due process, and the authority is the due process—not the Minister—you let due process run its course, if you want to talk about certainty. Having Ministers coming in at a whim is not certainty; it is uncertainty.

The Hon. DIANA LAIDLAW: It is unfair to suggest that the Minister would be coming in at a whim, because there must be consultation with the authority and it must be in the public interest. I am sorry that my explanation did not match my conclusion. I believe that the provisions in subclause (5) are a sufficient safeguard at this time. I will not be supporting the amendment.

Amendment negatived.

The Hon. M.J. ELLIOTT: I move:

Page 9, lines 10 to 12—Leave out subclause (9) and insert:

(9) The authority must take all reasonable steps to make a decision about whether a provisional entry should or should not be confirmed within 12 months after the date on which the entry was made and if the Attorney fails to make a decision within that period or such longer period as is allowed

by the Minister in the particular case, the must provisional entry must be removed from the register.

The provisional entry in subclause (9) should not lapse. I think there should be a requirement to confirm or remove the entry within a 12-month period, and that is what the amendment seeks to do.

The Hon. DIANA LAIDLAW: I support the amendment.

The Hon. ANNE LEVY: The Government is happy to accept the amendment.

Amendment carried; clause as amended passed.

Clause 19—'Registrations in Lands Titles Registration Office'.

The Hon. M.J. ELLIOTT: I move:

Page 9, line 14—Leave out 'confirmed' and insert 'made'.

I am looking to ensure that title, where there is provisional entry, does make quite plain what has occurred. It is not when the provisional entry is confirmed but when the entry is first made. I think it is important that a person should be aware that this process is under way.

The Hon. ANNE LEVY: I do not get the difference. Do you mean that a provisional entry in the register is confirmed and turned into a permanent one and is no longer provisional? I am not quite sure of the point that the honourable member is trying to make. The advice I have is that the Registrar-General can put on a title that there is a provisional entry on the heritage list. It would be extra work for the Registrar-General, but if Parliament wishes that to be done it will be done. On the other hand, there will be cases where, later, it will be reversed. It will mean that each one will have to be done twice; it will have to be marked that it is provisionally on the list and at a later stage it will either have to be marked that it is no longer provisionally on the list but definitely on the list or that it has been taken off the list. To that extent it is double handling by the Registrar-General. Perhaps the honourable member could explain the difference between 'confirmed' and 'made'.

The Hon. M.J. ELLIOTT: The first part of the process is that you make an entry which is later confirmed, and there is a process that goes on between those two. If somebody is considering buying a property I think it is only reasonable that they should have some warning that already the provisional process is under way. That is just as important, I suppose, as later confirmation. If confirmation is important for a potential buyer to know, the fact that it is even being considered is important. Otherwise, you will find a person trying to dispose of a property to some poor innocent wretch who comes along.

The Hon. Anne Levy: Are you saying that heritage lowers values?

The Hon. M.J. ELLIOTT: I think people should at least know the circumstances. If you think that clause 19 is justifiable at all then it is just as justifiable to make it when the entry is first made. It is just as important then as later on when it is confirmed.

The Hon. DIANA LAIDLAW: I think the Minister also must explain what 'where a provisional entry on the register is confirmed' means. I would have thought that if it was confirmed—

The Hon. Anne Levy: That means it has become a permanent entry and not a provisional entry.

The Hon. DIANA LAIDLAW: Yes, and it is on the register and no longer a provisional entry. So it is confused in that sense, too.

The Hon. Anne Levy: That's the lawyers' way of saying it.

The Hon. DIANA LAIDLAW: You are saying that there is no allowance here for a provisional entry on the register to be noted by the Registrar-General; it is only when it is on the register. I think that is unclear. The Hon. Mr Elliott is seeking to have it noted on the relevant instrument of title when it is first proposed for provisional entry. I feel that it is only fair, if I were looking at titles, that I should be provided with such important information as provisional registration, and I would be prepared to support this amendment.

The Hon. ANNE LEVY: It has been brought to my attention that this provision is to make sure that when a heritage item is permanently on the list that that is mentioned on the title. What the Hon. Mr Elliott is proposing is that if it provisionally goes on the list it has to be put on the title, which will then have to be amended at a later stage either by changing it from provisional to being fully on or by removing it altogether. So it is double handling. On the other hand, what the Hon. Mr Elliott is attempting to achieve is highly desirable—that anyone thinking of purchasing a property should be informed that it is on the provisional heritage list.

Section 90 of the Land Agents, Brokers and Valuers Act provides the matters that a land agent must indicate to any prospective buyer of a property, and that includes this matter. There are a whole list of things which it is obligatory to point out to a prospective buyer—and whether it is on the provisional heritage list is one of them.

[Midnight]

So, that protection is afforded to buyers at the moment without having to give the Registrar-General doubling handling. This clause provides that, when it is no longer provisional but the property is on the permanent heritage list, that is so important that it should be noted on the title of the land. The provisional aspects and the danger of people being caught unawares whilst the assessment is occurring is covered under other legislation as one of the matters which must by law be drawn to the attention of any purchaser.

The Hon. DIANA LAIDLAW: At this stage I indicate that I will continue to support the amendment. I believe there would be instances where a person would not necessarily deal through a land agent or broker to gain the information about the property that they may be looking at and making decisions about before they have engaged a broker. Also, I suspect that there will not be multiple numbers of properties entered on the provisional list because I note that frivolous submissions are to be rejected by the authority in terms of representations. I suspect that even if one took into account frivolous representations and submissions, there would not be a whole lot in any one month or year. This matter should remain open for consideration at least for the time being.

Amendment carried; clause as amended passed.

Clause 20—'Appeals.'

The Hon. M.J. ELLIOTT: I move:

Page 9, lines 18 and 19—Leave out 'If an owner of land provisionally entered in the Register make representations to the Authority with respect to that entry, the owner' and insert 'Any person who made submissions to the Authority with respect to a provisional entry in the register'.

The essence of this amendment is that any person having made a submission during a provisional entry's assessment should be able to appeal a decision to remove the entry from the register. Just as people can be involved in going on to the register, if it is to be removed they should have exactly the same sort of capacity to be involved.

The Hon. ANNE LEVY: The Government opposes this amendment very strongly. It gives the right of third party appeals, and this is a considerable opening up of the process. Experience has shown that this is often not very constructive. It can be misused in a mischievous fashion, and can considerably slow down certainty for an owner. What is suggested in the Bill is that if a property is proposed to be put on the heritage list, there is plenty of opportunity for third parties to make submissions. Anyone with an opinion on the matter can have their say, but once the decision has been made, we are suggesting that the only right of appeal should lie with the owner of the property. After all, the owner is more intimately concerned than third parties, and my opposition to this amendment does not prevent third parties from having their say.

In the initial phase, submissions are called for and they can come from any individual, group or company. We are dealing here with appeals only. After a decision has been made, we are suggesting that appeals are only open for the actual owner of the property, and it is fair enough that the owner should have a right of appeal. It is felt undesirable to extend that right of appeal to third parties where it certainly extends the process and can make things extremely expensive and drawn out for an owner who may not have the resources to be represented adequately in an appeal but is forced to it by some third party group which, after all, are not the owners. As I say, the Government certainly feels that third parties should make their representation at the initial stages as strongly as they wish, but once a decision is made they should not have the right to appeal.

The Hon. DIANA LAIDLAW: The Liberal Party will not be supporting the amendment, although I have some sympathies with the sentiments expressed by the Hon. Mr Elliott. Perhaps the remarks I made to the earlier amendment are more appropriate to this one, and they are worth repeating. I do believe there is considerable onus on the Government in terms of the appointments to this authority. There is considerable onus on the authority, in turn, to encourage input through a wide range of submissions, both written and oral, to any proposals for provisional listing and permanent listing.

Because we are trying in this Bill to adopt a new approach, which is to encourage community consultation at an early stage, and then introduce some elements of certainty in the Bill, it is worthwhile giving that new approach some chance to proceed in the knowledge that there will be members in this place and in the community at large very keen to see that this system works. I have an undertaking from the shadow Minister in the other place that, whilst we do not support this amendment at this time, we will be keeping a very close eye on the operation of the Act and will be prepared to reconsider the matter if our faith in the procedure outlined in this Bill is not honoured or perceived to be working.

Amendment negatived; clause passed.

Clause 21 passed.

Clause 22—'Certificate of exclusion.'

The Hon. M.J. ELLIOTT: I move:

Page 10, line 36 to page 11, line 3—Leave out subclause (3) and insert:

(3) The authority must give notice of the application by advertisement published in a newspaper circulating throughout the State inviting representations on the question whether a certificate of exclusion should be granted on the application within three months of the date of the notice.

This amendment provides that certificates of exclusion should be advertised and representations received for three months. The idea of certificate of exclusion is a good one, and the Democrats support the notion, but I think that it is worth noting that the only people who apply for certificates of exclusion are people who are occupying buildings which they think must be at least likely, or have some possibility, of being heritage listed. In other words they are in places of at least potential significance. I think it is only reasonable that, if they are going to seek a certificate of exclusion, there must be a chance for public input in relation to that occurring, in the same way as there is potential for public input if something is going to be put onto the register.

The Hon. DIANA LAIDLAW: I have the same amendment on file so therefore I support this measure.

The Hon. ANNE LEVY: The Government opposes this amendment as it will create inefficiency and delay. It will certainly increase costs if every case has to be advertised. After all, it is an authority which is comprised of knowledgeable experts in this area and to whom we are giving a great deal of responsibility in heritage matters, and it is the authority which has the power to decide whether a case is contentious or not. It is not anticipated that many cases will come into that category and not be handled expeditiously. It is the authority itself which is making a decision about a certificate of exclusion. We trust it in matters of putting places on the register and I do not see why it should be any less responsible in deciding that a place certainly will not be considered for the register for a period of five years.

This measure will cause a great deal of delay. One could imagine a property owner who wishes to sell his place and the prospective buyer wants to know whether or not it is likely to be heritage listed, and whether or not it is going to determine whether he is prepared to pay for it. The parties go to the authority and the authority is happy to give a certificate of exclusion. However, if this amendment is passed it will mean that there will be delay; that advertisements have to be placed around the place inviting representation within three months, so that the whole process will be slowed down for three months and the prospective buyer will not know whether or not there is a certificate of exclusion for that period. My guess is that he will walk away and the property owner will be disadvantaged because he cannot obtain his

certificate of exclusion and therefore misses out on the sale that he intended to make.

The Hon. Diana Laidlaw: You've said 'he' all night.

The Hon. ANNE LEVY: I have said 'she' quite often, but I am trying to hurry up. This suggested amendment displays a lack of confidence in the authority and is unfair on people who wish to obtain a certificate of exclusion, in that it will considerably delay decisions and consequently very much affect their rights to sell or develop their property.

Amendment carried; clause as amended passed.

Clause 23—'Removal from Register if registration not justified.'

The Hon. M.J. ELLIOTT: I move:

Page 10, line 14—Insert 'and to any persons who made submissions with respect to the provisional entry of the place in the register' after 'place'.

The essence of this amendment is that if there is to be the removal of a place from the register it is only reasonable that persons who made submissions with respect to the provisional entry of the register be notified, which gives them the opportunity to respond.

The Hon. ANNE LEVY: The Government opposes this amendment. There may be a period of 20 or 25 years between the placing of the item on the register and the suggestion of taking it off. For the authority to locate these people 25 years later would be a virtually impossible task and it is quite unreasonable to suggest that the authority should have that responsibility.

The Hon. DIANA LAIDLAW: I support the Minister's explanation and therefore will not support this amendment.

The Hon. M.J. ELLIOTT: I note that a simple addition to my amendment such as 'where reasonably possible' could have solved the problem; but the Minister has opposed almost every amendment so I do not think it is going to make much difference.

Amendment negatived; clause passed.

Clauses 24 to 29 passed.

Clause 30—'Stop orders.'

The Hon. M.J. ELLIOTT: I move:

Page 12, after line 14—Insert:

(1a) The order may require the person against whom it is made to take action, specified in the order, necessary to preserve the heritage value of the place until the matter is considered by the court under subsection (4).

This amendment seeks to ensure that there is a power to require work to be carried out in an emergency situation to prevent a reduction of heritage value.

The Hon. ANNE LEVY: The Government opposes this amendment. As worded, it is indeed a very broad power. There could be an order to do virtually anything to preserve the heritage value of a place, and it could potentially be very unjust. I am sure the intention of moving it is to provide that, if for instance a roof is being removed, there is protection of the interior, but powers to make such orders already exist under the Building Code. It is not necessary to place a very broad power in this Bill which could be used for far more than that when, in building matters, the powers exist under the Building Code.

The Hon. M.J. Elliott: The authority does not have that power, though.

The Hon. ANNE LEVY: No, the authority does not, but the building authorities certainly have the power to make orders that 'Thou shalt put a roof on,' or 'Thou shalt not put a roof on.' It is possible to make such orders under the building code.

The Hon. DIANA LAIDLAW: My advice was that this provision was not necessary and I will not be supporting the amendment.

The Hon. M.J. ELLIOTT: I can understand the concern that the Minister raises, and the power may indeed exist under another Act but, of course, the authority has no power to use the powers under another Act. That is a reliance on some goodwill. There may be times when the need for an order may be relatively urgent, and I am frankly disappointed that neither Party has actually expressed disagreement with the sentiment of what this is trying to achieve. I would have thought having recognised the difficulty that is created by the wording that there might have been a further amendment at least to pick up the basic concept.

Once again, just thinking on my feet, it would seem that you could at least require work that is necessary to prevent further deterioration of heritage value or something like that—work which is just preventive, such as covering a roof, if the roofing iron has been removed, or something such as that.

The Hon. Diana Laidlaw: Wouldn't it be covered by its being necessary 'to protect the place' as in clause 30(1)(b)? That is why I was told the amendment is not necessary: because I was told that it was covered.

The Hon. M.J. ELLIOTT: Generically it is simply an order to stop demolition or something like that, as I understand it.

The Hon. Anne Levy: It is protection.

The Hon. M.J. ELLIOTT: A protection order cannot be that 'You will cover the leak in the roof or something like that. It is simply interim emergency protection for the place as a whole, not perhaps to stop something which will cause rapid deterioration, such as removing a roof when it is raining.

Amendment negatived.

The Hon. M.J. ELLIOTT: I move:

Page 12, lines 21 and 22—Leave out the comma and all words on these lines after 'subsection (1)' and insert:

(a) The authority must forthwith apply to the court for an order under this section; and

(b) If the place is not entered in the register, provisionally enter the place in the register.

I believe that stop orders, after being confirmed by the court, should be valid only for a specific time, during which the authority must, if the place is not already on the register, assess its heritage value.

The Hon. DIANA LAIDLAW: The Liberal Party supports the amendment.

The Hon. ANNE LEVY: I am happy with the amendment.

Amendment carried.

The Hon. M.J. ELLIOTT: I move:

Page 12 after line 29—Insert:

(5) If a place that is subject to an order under this section is removed from the register, the order ceases to have any effect.

I believe this is a consequential amendment.

Amendment carried; clause as amended passed.

Clauses 31 to 37 passed.

Clause 38—'No development orders.'

The Hon. DIANA LAIDLAW: I move:

Page 15, after line 24—Insert:

(2a) Before making an order under this section the court must give—

(a) Any person with a registered interest in the land constituting the place; and

(b) If the land is within the area of a council—the council, a reasonable opportunity to make submissions on whether the order should be made and, if made the term of the order.

This amendment provides that, before making an order under this section, the court must give formal advice to two parties: first, any person who has a registered interest in the land that is the subject of the order and, secondly, the council if the land is within the area of the council, and the court must provide the two parties with reasonable opportunity to make submissions on whether the order should be made and, if made, the term of the order.

The Hon. ANNE LEVY: The Government is happy to accept this.

Amendment carried; clause as amended passed.

Clauses 39 to 44 passed.

Clause 45—'Regulations.'

The Hon. M.J. ELLIOTT: I move:

Page 17, line 18 and 19—Leave out the comma and all words after 'example' on these lines and insert:

(a) fix and regulate fees for the provision of information or other services by the authority or the making of applications to the authority; and

(b) Set out guidelines to be followed by the authority in determining whether a place is of heritage value or is of geological, palaeontological or archaeological significance; and

(c) set out standard clauses for inclusion in heritage agreements.

I think the amendments are reasonably self-explanatory. We are trying here to spell out specifically what the regulations will cover.

The Hon. ANNE LEVY: The Government opposes this amendment and maintains that is quite unnecessary. It is certainly not the intention to have regulations that would determine matters such as guidelines for seeing whether a place is of geological, palaeontological or archaeological significance.

If there is talk of some place being of palaeontological significance, the current practice is for advice to be sought from palaeontologists who are to be found in the Museum or in the Department of Mines and Energy. There are plenty of experts who can be consulted for their opinion as to whether something is of palaeontological significance. I do not know how one sets out guidelines for such things. One would need to write a textbook on palaeontology, a different one on geology and yet another on archaeology. It seems an extraordinary lack of trust in the authority that it will have to make a decision from some textbook containing guidelines rather than follow the current practice of consulting experts.

The further amendment, which I suppose will be moved separately but which obviously inter-relates with this amendment, indicates that regulations containing guidelines will be published throughout the State and people will have three months to object to them. That is absurd. How does one determine whether a place is of archaeological or palaeontological significance?

Advertising and waiting three months for anyone to object to these guidelines seems to make nonsense of the whole procedure. There is no doubt that, as at present, if there is a suggestion that something is of palaeontological or archaeological significance, experts in those areas will be consulted. They are more likely to be able to determine the significance of such things than people with no knowledge trying to decipher guidelines, which are virtually textbooks, during a period of three months. It all seems quite unnecessary.

In the past there have never been any regulations under the Heritage Act. Those proposed under the new Act will cover routine administrative matters such as application forms, the form of the permits and the certificates and the fees for them—fairly standard regulations. It is not felt that any other types of regulations are necessary or desirable.

The Hon. M.J. ELLIOTT: I think it is reasonable to say that the State Heritage Authority will probably spend

98 per cent of its time looking at buildings; it will spend very little time looking at matters of geological, palaeontological or archaeological significance, and at most it will probably have only one person with any expertise.

The Hon. Anne Levy: So it goes to experts.

The Hon. M.J. ELLIOTT: No. The fact that the authority will be looking at so many buildings means that it will develop its own practices. As the members gather experience they will develop their own practices. They will look at many places in relation to palaeontology and archaeology that will be almost one-offs, but on what basis will this committee of non-experts with no experience decide whether or not a site is of heritage value?

The Hon. Anne Levy: By going to the experts and asking them.

The Hon. M.J. ELLIOTT: I think that will be relatively easy in relation to buildings, but it may be relatively difficult elsewhere. That is why we should give them some sort of guidelines to work within and to measure against whether or not something is of significance. When the experts give advice, how will that advice conform to the guidelines that they are working within? That is the thinking. The Minister may agree or disagree, but that was the reason for it.

The Hon. DIANA LAIDLAW: The Liberal Party will not support the amendment. I note that the staff at the Museum are already consulted by people in the Heritage Branch now, to such an extent that the Museum people wish to start charging for their advice. I would be quite sympathetic to that, because they are used as a resource on almost a daily basis to respond to very detailed technical and academic questions on such matters as the Hon. Mr Elliott has noted will need to be determined when they are before the authority. I suspect that, even with guidelines, the answers would not be found to many of the questions that will have to be addressed. I would encourage the continuation of the practice of referring to the Museum, if that is appropriate, but that perhaps the Museum should fix and regulate fees for that service.

Amendment negatived.

The Hon. M.J. ELLIOTT: I move:

Page 17, after line 19—Insert:

(3) Before regulations are made under subsection (2)(b) or (c), the Minister must, by advertisement published in a newspaper circulating throughout the State, give notice of the proposed regulations—

(a) stating how a copy of the proposed regulations may be obtained or inspected; and

(b) stating that written submissions may be made to the Minister with respect to the proposed regulations within three months of the date of the advertisement.

The essential concern of people who have spoken to me was that the regulations are important and that in such circumstances this would ensure consultation before promulgation of the regulations.

The Hon. ANNE LEVY: The Government opposes this amendment. It seems absurd. There will be three months during which time people around the State can make submissions on the form of words to be used on a permit or how an application form is to be set out. It seems totally unnecessary. It suggests some degree of paranoia in terms of what we expect regulations to contain. If they contain something which is clearly against the public interest, the Parliament, which represents the population, has the right to disallow them. It seems out of all proportion to suggest that detailed regulations about printing on a form should be circulated throughout the State for three months.

Amendment negatived; clause passed.

Schedules and title passed.

Bill recommitted.

Clause 4— 'Authority '—reconsidered.

The Hon. ANNE LEVY: I just want to talk about the recommittal. The advice I have received is that the Minister in charge of the Bill had an agreement with the shadow Minister in another place on the wording of clause 4, page 3, line 9. The Minister is of the opinion that he prefers the words that are currently there. So, I propose not to move that amendment, though obviously if anyone else wishes to move it I am happy to ask for recommittal, but I will not be moving it, on the understanding that the form of words which I moved was that agreed between the Minister and the shadow Minister in another place.

The Hon. DIANA LAIDLAW: I move:

Page 3, after line 9—Insert:

(3a) Before filling a vacancy in the membership of the Authority, the Minister must, by advertisement publish in a newspaper circulating throughout the State, invite interested members of the public to submit (within 14 days of the advertisement) the names of persons whom they regard as suitable candidates to fill the vacancy.

This amendment follows the amendments that I accepted earlier, as moved by the Hon. Mr Elliott, in terms of the membership of the authority and the Minister being required to call through public advertisement for nominations. It seemed to me that, having accepted that amendment, which is very similar to the amendment we moved to the Development Bill last night, we should then move in respect to the Local Government Association that the Local Government Association nominate a panel of three persons and the Minister choose one person from that panel. That is an amendment that we have accepted in this place over many years as the best basis for seeking such nominations from associations and we believe it is appropriate in this instance. We would then not require the Minister to call public nominations for that position of local government representative in view of the fact that we would have this panel arrangement for nominations. So, the provisions now in the Heritage Bill for membership of the authority would be the same or similar to those in the Development Bill that we all accepted last night.

The Hon. ANNE LEVY: I will be opposing this amendment on the basis that the agreement between the Minister and the shadow Minister in relation to this amendment was the form of words which currently stand in clause 4, and the Minister prefers the form of words agreed to between him and the shadow Minister in another place.

The Hon. M.J. ELLIOTT: I am not sure if there was a misunderstanding. I had the impression there was going to be an amendment—I think the Minister was originally suggesting something—along the lines that the Local Government Association advertise within its membership seeking people that it might then nominate. That is not what this amendment has done. That may be my misunderstanding, but I think the Hon. Diana Laidlaw is correct in relation to the Development Bill and many other Bills: that we have panels of three. Generally speaking, I have tried to have a single nominee. I have always felt that an organisation should be able to choose whom they want and it should not be for the Minister to choose whom he or she wants from a group of three or whatever number.

The Hon. Diana Laidlaw: There is an inconsistency with your amendment that we passed earlier.

The Hon. M.J. ELLIOTT: I will oppose the first part of the amendment. It may be, as the Minister argues, consistent with an agreement that has already been reached with the LGA. It is also consistent with my preferred way of getting nominees from organisations that they should put up the person that they prefer.

Amendment negatived.

The Hon. DIANA LAIDLAW: I move:

In new subsection (3a) after 'Before filling a vacancy in the membership of the Authority' insert '(other than a vacancy to be filled by a person chosen from a panel submitted by the Local Government Association)'.

As I indicated when speaking at the earlier Committee stages, it is important following the amendment that I accepted from the Hon. Mr Elliott earlier in the evening about public advertising for the filling of such positions, that we must exclude from his broad amendment the Local Government Association. This is what this amendment seeks to achieve. I would, however, because I lost the earlier amendment, seek to move my amendment in an amended form by taking out the words 'from a panel submitted' inside the brackets, so it would read, 'other than a vacancy to be filled by a person nominated by the Local Government Association'.

Amendment carried; clause as further amended passed.

Bill read a third time and passed.

NATIONAL PARKS AND WILDLIFE (MISCELLANEOUS) AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 2366.)

The Hon. M.J. ELLIOTT: This amending Bill has two major thrusts and, with the exception of one amendment (which I will discuss later), has the support of the Australian Democrats. The first intention of the amendments is to facilitate the farming of protected native animals; the second is to increase penalties for taking and harming marine mammals which are already protected.

The southern right whales we have visiting the South Australian coast may be members of a world population of around only 2 000. Up to 20 calves were born in our waters during the last season, which ran from May to October 1992, so the importance of allowing these creatures to go about their business with minimal disturbance is vital for the future of the species. We are on the verge of another season. I will read a section of a letter I received some months ago from a person who was concerned about whale harassment on the Encounter coast. It states:

Ample observations have been made by researchers that swimmers, boats and aircraft do disturb whales. Their behavior changes and they actively avoid contact when those disturbances continue or increase. When mild harassment ceases, the whales may return to their previous activity fairly quickly, but will usually move on when disturbed.

Whales are gentle creatures, totally aware of their surroundings through their acute sense of hearing, though they possess relatively poor eyesight. Because of this, motor noise can alarm and confuse them, with the downdraft of helicopters hovering over or near causing particular distress. Whales may get into peril as they blindly try to avoid a noise source by blundering into a reef or becoming beached in the shallows, for example. When alarmed, mothers and calves become separated, with the calf susceptible to grief by accident or from predators like killer whales or sharks.

If a mother should be accidentally killed, beached or seriously injured, young calves could not fend for themselves and would soon perish, compounding the tragedy. With boats, even when they are moving slowly, revolving propellers can injure whales, particularly curious calves that approach too close. Harassment is not always negatively inspired nor is it always hoons who cause problems. More often than not good, law-abiding people who genuinely appreciate whales harass them in over-curious ignorance. It is an education objective that the guidelines/laws and the reasons for them become widely known.

As with the sanddune problems, I believe that once people know and understand the problems they will become allies in solving them and encourage others to do so, too. Other harassment has occurred through some people doing their jobs, such as TV crews in helicopters or chartered 'whale watching' boat operators. Often these offenders are well aware of the rules yet frequently bend or break them. Knowing that the present guidelines are virtually unenforceable allows them to flaunt them at will.

With the enormous interest that has been generated in whales and no improved protection, the number of harassment incidents is certain to increase while whale numbers may not. At the very least, this harassment may lead to them avoiding suitable locations along the coast close to built up areas where people can watch and enjoy them near to their homes without the need to travel long distances or to remote and sensitive areas.

I have in the past asked several questions in this place about the need for enforceable rules governing whale watching and I am pleased to say that these amendments do begin to address this. The effect under clause 7, which repeals and replaces section 68 of the Act, will be that the current guidelines for whale watching in South Australia can be promulgated as regulations. These guidelines prescribe distances and acceptable behaviour for boats and people in the water with a whale and also for aircraft observing the activities of a whale.

The problem has been that no action, apart from stern words, has, in the past, been able to be taken against an individual or group which breaches the guidelines in such a way that distresses the whale or causes it to alter its behaviour. I have heard on many occasions—not just the letter I have quoted—the comment that knowing that the guidelines are virtually unenforceable allows frequent offenders to flaunt them. These amendments will hopefully end their game.

The worst offenders have definitely been boats and helicopters, the latter usually chartered by or belonging to television stations and used to get footage for their evening news broadcasts. At times last year there were up to three separate helicopters hovering over a whale, and in one case over a mother and her newly born calf.

In that incident the mother took her calf from the area as a result of the disturbance. The downdraft caused by helicopters hovering not far above the mammals can, I am told, cause not only extreme discomfort to their sensitive hearing but also interfere with their communication and navigation. This has been observed to be quite distressing. I am unsure whether the issue has been canvassed with them before, but I ask the Minister to consider approaching the television stations to explore the possibility that not all their aircraft are in the air at the one time.

The Hon. L.H. Davis: Have emus got two legs?

The Hon. M.J. ELLIOTT: Quite clearly you haven't read the legislation, Mr Davis, or you would know that there are other clauses in it besides those relating to the farming of native animals. So do not display your ignorance; remain quiet. There are two options for reducing the amount of air traffic above whales. It could be that arrangements could be made between the stations to share footage as that taken by each station of any particular incident or whale cannot vary greatly on any given day. The other option is for the stations to pool resources and contribute to one special charter flight which could accommodate more than one camera crew. In that case the chartered pilot could be familiar with the rules and accountable to the national parks for any breaches.

That brings me to another question: should a news helicopter be viewed to be descending above a whale below the minimum accepted height, which is 300 metres, who would be liable to prosecution, the pilot of the chopper or the station as an entity?

The amendments will also provide for it to be an offence to continue an act or activity after being directed to stop by a warden or ranger. This direction or warning

has the potential to take many forms. I ask the Minister: which of these situations would constitute a warning having been given? Does a broadcast warning, given on the media along with whale watch information, constitute a warning under the Act? Does a telephone call to the person in charge of a television newsroom by rangers who have observed that station's helicopter acting in an unacceptable manner also constitute a warning? What about signs erected near popular whale watching sites, or printed material distributed by the National Parks and Wildlife Service?

I have raised in this place, by way of question to the Minister, the issue of raising the awareness of the boating public to its responsibilities regarding whales via boat licences. I have asked whether the licence test and conditions should include basic whale watching distances. Then a person breaching behaviour and distance requirements could be in danger of losing their licence. That would be a good deterrent to any boat operator considering trying to get closer to a whale or trying to manoeuvre it closer to shore. I must commend the funding this year by the Victor Harbor and Goolwa/Port Elliot councils of a greater National Parks presence at whale watching locations. A caravan for the public will be towed to the nearest access point to the sighting.

I am told that the van will be staffed by two rangers—one who will stay with the van and distribute information to the public, and the other, equipped with a mobile phone, who will go out onto the cliffs, the beach or wherever to watch not only the whales but also the whale watchers. The on-site ranger can be available to educate people about their actions, and can also telephone reports of bad behaviour on the part of boats and aircraft. This greater surveillance and education role is vital to ensuring that nothing that we do, as the public of South Australia, will discourage these creatures from returning year after year.

Perhaps the major issue in this Bill is that it contemplates the farming of a native species for the first time in South Australia. This is not something to approach lightly, and I am pleased to see that there is a requirement for a code of management for each animal contemplated for exploitation. Before I go further, let me make it quite clear that I have no basic problem with the farming of native animals. It was only last evening that I had kangaroo as my main course, and I make it quite plain that I have no difficulties in the use of native animals as a food source.

The first animal which is likely to be farmed obviously will be the emu. The lobby for the use of its meat, hide and feathers has been growing rapidly. I have two concerns with respect to emus, and in fact any animal which may at a later date be the subject of a permit under these amendments. First, with respect to animal welfare, most animals currently farmed have been domesticated over a very extensive period. For instance, sheep and cattle have been kept by farmers for a long time. As a consequence, I believe they can be treated in a quite different way from that in which you would hope to treat perhaps kangaroos or emus. They are much more easily herded and placed into trucks. Their nature has changed over time due to genetic selection as to those which are most suited to those conditions of being maintained.

My first concern is that we must take into account the fact that these are wild animals that we are seeking to keep domestically, and it will take many generations before we can expect to be able to treat them in the same way as we might treat other domesticated animals. Secondly, if we start keeping native animals in large numbers, the relative size of the captive populations compared with the wild populations in any one particular area may be of some importance. For instance, in an area where 90 per cent of the emus are in captive populations and breeding programs are carried out over time for desirable traits (and that is something the Hon. Mr Dunn referred to during his contribution), and that would be inevitable with farmed animals, I would not like to see the captive populations and the wild populations having a gene flow between them.

Where the captive population is significantly larger than the wild population, and perhaps the wild population is very small, a mixing of the genes would be most undesirable, particularly from the captive population to the wild population. There is an important environmental issue that needs to be considered.

This brings me to a code of management. If I am to support the farming of Australian wild species, I would like to believe that there is a code of management which takes into account those two concerns, namely, animal welfare, where the animals have not been domesticated in the true sense of the word over many generations, and an assurance that captive populations and wild populations do not mix, ensuring there is not a gene flow from the captive populations to the wild populations. Both of those situations are highly undesirable.

I will quite happily eat the products of such farming if I believe that those two issues are taken into account. I have no real problem with supporting native animal farming if they are taken into account. It is to that end that I will be moving an amendment to clause 6, with respect to section 60d(7) of the Act. Before licences can be finally granted for the farming of animals, a code of management should already be in place. Once that adequately addresses those two issues, my major concerns in relation to the farming of Australian species will have been addressed. I support the second reading.

Bill read a second time.

In Committee.

Clauses 1 to 5 passed.

Clause 6—'Insertion of Division IVA into Part V.'

The Hon. M.J. ELLIOTT: Before moving amendments to this clause I wish to ask the Minister a question. During the second reading stage of the Bill I asked a number of questions, many of which related to the marine mammal clauses to which I have no amendments. Can the Minister give me a written response to those questions raised rather than getting an answer now? If I could have a written response during the break I would be most appreciative.

The Hon. ANNE LEVY: On behalf of the Minister I am happy to give that undertaking that the various questions raised will be responded to and the information supplied to the honourable member during the break.

The Hon. M.J. ELLIOTT: I move:

Page 3, line 6—Leave out '12 months' and insert '15 months'.

All the amendments I have are related so I will speak to them together. The proposition I put is a straightforward one. I support the farming of emus and other animals, but that before those animals are to be farmed a code of management should be in place, that is, before we start granting licences. During the second reading stage I raised two issues which I felt the code of management should address: issues in terms of handling of the animals, recognising that they are of a different nature to our currently domesticated animals, and also in relation to ensuring that they are properly kept such that we do not have the captive population mixing with the wild population. If those two issues are adequately addressed I have no difficulties with the farming of emus or other native species.

However, if those matters are not addressed I would have severe difficulties and I could not support the legislation. Having been addressed, though, a code of management in a later amendment would need to be approved by Parliament. That could cause a delay of about two or three months. Currently it is allowed that existing licences have a 12 month period of grace but considering any such delay I think it would be necessary to provide an extra three months. So we are going from 12 months to 15 months, so that there is no disadvantage caused to those initial licence holders while that matter is being considered.

The Hon. ANNE LEVY: The Government opposes this series of amendments. As the honourable member says they all relate to the same topic and one either accepts or rejects them as a package. There is already in existence a national code on the welfare of emus in emu farming and a national code on the slaughter of emus in emu farming.

The Hon. M.J. Elliott: This will apply to other animals later on, not just emus.

The Hon. ANNE LEVY: Obviously, but at the moment it is the topic of emus that we are considering, and the intention is to develop a code of management for each native species that might be farmed. Currently that means emus, but exactly the same principle would apply when it extends to other native species. The intention is to develop a code of management by consideration of the National Code of Practice on both the welfare and the slaughter of emus, and to have a consultative group to incorporate these into a code of management for South Australia, utilising also the information on best practice on what is occurring in the three States which currently have emu farming: Western Australia, Tasmania and Queensland.

This development of a code of management will involve representation from the Department of Environment and Land Management, the Department of Primary Industry, the Emu Farmers Association—so that the industry itself can have an input—and the Conservation Council. The development of this code of management will involve three months of public consultation so that there will be plenty of opportunity for individuals to state their views about the code of management which is being developed. In the light of this process the Government feels that the measures set out in the Hon. Mr Elliott's amendments are unnecessary complications and will drag the practice out. If a code of management is derived by this representative group with full public consultation and incorporation of best practice in other States, there is no need to have a further process involving the Parliament. It is certainly not usual to have codes of management pass through a parliamentary procedure. It is expected that exactly the same process would be followed if farming of other native species is introduced at some stage.

The Hon. PETER DUNN: The Opposition does not support the amendment, on the basis that there was an expectation in this State that emus would be farmed perhaps two years ago, and a number of people have already spent considerable sums of money purchasing emus and breeding them. They are holding them at the moment and want to distribute them to other breeders or they want to process them. I listened to the Minister's explanation and thought it was very reasonable and is as it should be. I believe that they have been breeding emus in Western Australia for some three to four years, particularly the Aborigines up in the Warburton area, and they now have the reasonably accurate method by which emus can be kept in captivity without causing undue strain. So, I am quite happy with the Minister's explanation as to the timing and to the public exhibition that it will have, and therefore people should have plenty of time either to explain their situation in relation to this code of management or to object to it. So I think there is plenty of time. The Opposition will not be supporting the amendment.

Amendment negatived; clause passed.

Remaining clauses (7 and 8) and title passed.

Bill read a third time and passed.

CLASSIFICATION OF PUBLICATIONS (DISPLAY OF INDECENT MATTER) AMENDMENT BILL

Returned from the House of Assembly without amendment.

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

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

GUARDIANSHIP AND ADMINISTRATION BILL

The House of Assembly intimated that it had agreed to the recommendations of the conference.

YOUNG OFFENDERS BILL

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

YOUTH COURT BILL

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

WORKERS REHABILITATION AND COMPENSATION (REVIEW AUTHORITIES) BILL

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

EDUCATION (TRUANCY) AMENDMENT BILL

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

CRIMINAL INJURIES COMPENSATION (MISCELLANEOUS) AMENDMENT BILL

The House of Assembly intimated that it had been unable to consider the Legislative Council's amendments to the House of Assembly's amendment inasmuch as they were amendments to a money clause.

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

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

That the Legislative Council resolve to suggest, rather than to amend, the House of Assembly's amendment.

The Hon. K.T. GRIFFIN: I indicate support for the motion moved by the Attorney-General. I recognise that behind the scenes there has been some debate about the appropriateness of the way in which the Legislative Council previously dealt with the amendments that we wished to make to the levy clause. I think that there are some difficulties or at least areas of doubt about some aspects of the procedure, and I do not think it is appropriate to canvass them now at this hour (1.25a.m.). Suffice to say that I think it is important to note that there has been some debate. There is some uncertainty about the appropriate procedure and, I would suggest, possibly also some areas that do need to be canvassed. However, I will address those later.

The CHAIRMAN: I would like to make a statement. I believe the matter has important implications for the Legislative Council. I believe that the correct procedures were followed in that no vote was taken on the money clause, but it was in erased type and the message transmitting it to the House of Assembly stated that the clause was deemed necessary to the Bill. The House of Assembly subsequently amended the Bill by inserting an amended clause, and the Legislative Council then made amendments to the clause. These amendments were treated as ordinary amendments because there are no Standing Orders for subsequent procedures between the Houses on a Council Bill as is specifically set out for House of Assembly Bills with money clauses and amendments.

Blackmore's *Practice of the Legislative Council* states that the money Bills compact of 1877, in which the procedure was determined for money amendments in House of Assembly Bills, did not contain any reference to suggestions in Council Bills. The latter were authorised by Standing Order 281 of 1903 which later became Standing Order 278 and follows the English practice.

Difficulties would occur if the Houses resolved to insist on their positions, and at what stage does the process conclude and a conference is requested? Likewise, it is important to bear in mind that at a conference involving suggested amendments in a House of Assembly Bill, if no agreement is reached, the Bill shall be laid aside; the House of Assembly would not have an option any longer to further insist on its requirements. Of course, I consider this an important matter, and there has been some discussion about it.

The Hon. C.J. SUMNER: I would like to put my position on the record. There is probably not much point in getting into an argument now but, as people decided to get into the merits of the matter, I want to put on record that I do not agree with that interpretation. I think it is quite wrong, and I think there is a clear constitutional provision in this State which gives the House of Assembly primacy over money Bills, and that is reflected in a number of ways.

The Legislative Council cannot amend money Bills, but it can suggest amendments, and I believe that during the course of the to-ing and fro-ing between the Houses on clauses that are money clauses, that same provision should apply, namely, that the Legislative Council can suggest amendments to money clauses but does not actually make the amendments.

The absurd thing is that it is of no practical effect, so you are basically arguing about very little, and that seems to me to make the thing even more exasperating. However, it is done in that form because of the constitutional primacy of the House of Assembly over money Bills which is reflected in a number of ways in our Constitution Act and our Standing Orders. For that reason, I disagree with what you, Sir, have said about this matter. I think it is clearly wrong. I regret that the Council found itself in this situation, but I do not think it adversely affects the powers of the Legislative Council with regard to suggesting amendments in these circumstances rather than making amendments to a money clause.

In any event, it is consistent with the relative positions of the Houses on money clauses. Frankly, for the Legislative Council to assert that it has stronger rights with reference to money clauses is wrong. Therefore, I take issue with the statement that you, Sir, have made. I did not realise that we were going to get into a debate on the matter, but, as it has been raised, I wanted to put my position and that of the Government on the record.

The Hon. K.T. GRIFFIN: I do not want to get into a debate on it either, but I indicated that there are some issues which need to be addressed, particularly in relation to the procedures. I indicated, as I do again, that those issues need to be resolved or at least discussed at a later stage. When the Committee has reported I shall move a motion which I think will address that matter without taking a final position on the merits of the issue.

Motion carried.

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

That the Legislative Council resolves that, in the message to the House of Assembly in relation to the Criminal Injuries Compensation (Miscellaneous) Amendment Bill, the President inform the House of Assembly that there are concerns about the adequacy of the procedures and Standing Orders for dealing with a money clause in the circumstances surrounding this Bill and expresses the wish that, at a mutually convenient time in the future, a conference between representatives of the Legislative

Council and the House of Assembly be arranged to discuss further those concerns.

The Hon. C.J. SUMNER (Attorney-General): I second that motion. However, my support for it should not be taken to mean, as I said previously, that I think there are any major problems with the issue. It may be that the matter needs some clarification, and that is why I support the motion.

Motion carried.

STATE BANK

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

That upon presentation to the President, pursuant to section 25(5) of the State Bank of South Australia Act 1983, of copies of any report of the Auditor-General relating to the State Bank of Australia made pursuant to his appointment under section 25(1) of the Act, or upon presentation of copies of any report of the Royal Commission into the State Bank, the President is hereby authorised to publish and distribute such reports.

The Hon. K.T. GRIFFIN: I second that motion and obviously, by reason of that, support the motion which enables publication in some circumstances.

Motion carried.

HERITAGE BILL

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

ADJOURNMENT

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

That the Council at its rising do adjourn until Tuesday 8 June.

This is the traditional adjournment motion at the end of a session. I should like to thank the Opposition and the Australian Democrats for their attention to the legislative program. The Hon. Mr Griffin interjected a short time ago that he did not think we would get as much done as we did. I thank honourable members for their attention and the fact that that attention has led to the program of legislation (the Government's, in particular, but also to some extent private members' matters) being substantially achieved. There are a few matters left on the Notice Paper, but they will give us something to start with when we come back, I assume, in August.

I should also like to thank the staff in Parliament House—the clerks, messengers, *Hansard* and all the other staff—who make the Parliament function, particularly during the last two or three weeks of a session. These past two or three weeks have been similar to most in which I have been involved since coming into Parliament. They are very busy, sometimes stressful, but often productive. On this occasion, as I said before, they were very productive. Therefore, I thank all those who are involved with the Parliament. The fact that my remarks are brief does not mean that they are any less heartfelt. I commend the motion to honourable members.

The Hon. R.J. RITSON: Thank you for the opportunity to speak, Mr President. I rise not to respond particularly to the Attorney's motion, because I believe our Leader will do that, but to formally inform the Council that I expect to resign during the long recess and will not be here on opening day. Consequently, this is my last night in this Parliament. My motivation for taking this step was the practical consideration of my age and the way I feel about long nights, but also very personal matters about the direction of one's life and life-style and a choice between the continuance of this work for the remainder of my working life (as it would be with an eight-year term) or perhaps alternative futures, which I still have to choose.

One of the exciting things about life is that, as long as you are in fact alive, you do have the options of alternative futures. There are alternative futures for me in medicine; there are alternative futures for me in travel or gem cutting. I have as a personal choice decided to explore those futures. I have given a substantial number of years to the Council and have taken it seriously; I hope I am understood in making this choice.

The effect on my Party and on the Council should be minimal. The timing of the decision leaves great flexibility: for the Government in arranging the program for opening day, which will have to include a joint sitting and a swearing in; my Party machine, the Director of which has known about this for some time, will have ample opportunity for a smooth transition and appointment of a replacement; and my Legislative Council Liberal Party colleagues will have ample opportunity to choose a convenient moment to meet to discuss the nominations for committee and other positions that I currently hold so that those nominations can go forward smoothly on opening day.

So, I think I will do this in a way which will serve the needs of the Parliament and the Parties most conveniently. I am not going to reminisce or be nostalgic. The hour is late. But I have regarded it as a great privilege to work with you all. I have formed friendships across three sides of the Council. I have always tried, even when arguing vigorously, to avoid personal attacks.

There is really not a lot more to say, except to thank all of you for your courtesies and your friendships. The staff, as well, have always treated me with friendship, courtesy and assistance, and I just say goodbye to you and wish you well.

Honourable members: Hear! Hear!

The Hon. R.I. LUCAS (Leader of the Opposition): I rise to speak in two parts to this motion, first to respond to the adjournment motion from the Attorney-General. I thank the Attorney-General and members of the Labor Party, the Hon. Mr Gilfillan and members of the Australian Democrats for working together with members of the Liberal Party for, as the Attorney has indicated, a productive parliamentary session. As one of the more experienced members in the other place commented to me during the dinner break, it has been an unusual session. There have been a considerable number of pieces of legislation—admittedly a number of them small, but equally a number of significant Bills—which have been debated this session and, generally, debated

most productively. So, I thank the Attorney and other members of the Council.

Mr President, I again thank you for your good humour in presiding over this place. I thank the Table staff, *Hansard,* messengers and all other staff who make the operations of the Parliament the efficient, productive place I think it has been for this particular session.

Speaking to the motion I, as Leader of the Liberal Party and on behalf of the Liberal Party, want to place some comments on the record in recognition of the service that Bob Ritson has given to this Council. I know that one or two of my colleagues will speak personally as well, but formally as Leader of the Party I want to place on the record some comments. I note we are still waiting, Mr President, for messages from another place, so I am not unduly delaying the Council.

My first recollection of meeting Bob Ritson was back in the mid-70s. For the 1977 State election we had the unfortunate circumstance for a political Party to not only lose one but two candidates for that particular seat of Todd in the north-eastern suburbs before we actually got to the election. Bob had a medical practice out there and was well known in the area and was also a member of the Party. He told a group of his colleagues at the dinner table that the second candidate who resigned did so for personal reasons, and Bob found out later that the personal reasons were that he had conducted a survey and found out that he was going to lose by a considerable margin. He left the Party, leaving a parting gift to the incoming (the third) candidate for that seat, who was Bob—the results of that survey.

Of course, the Liberal Party was unsuccessful in 1977, and so too was Bob in that marginal area. Then in 1979 I can recall our State council which, for members of the Labor Party, is a body varying between 200 and 250 persons from all over South Australia, meeting in a hall—I think Enterprise House on Greenhill Road, but I really cannot swear to that—where there was a very large number of candidates for preselection in 1979. It was what looked like being an opportune time for the Liberal Party. In a brilliant, impromptu speech that Bob gave as one of many candidates, he came almost like a bolt from the blue, to some people anyway—I am sure not to Bob—and impressed, if not all, at least a good majority of the members of the State council of the Liberal Party and he won preselection for the Liberal Party at No. 6 on the Legislative Council ticket. As the Hon. Chris Sumner will know, position of No. 6 on the ticket is not always necessarily a strong indication that you are going to enter the Legislative Council at the following election.

In 1979 the Liberal Party recorded almost its strongest vote on record. We were successful in winning six positions and Bob entered the Legislative Council. It was only many years later that I learnt the secret to the brilliant nature of the impromptu speeches that Bob delivered—or at least some of them, any way.

The Hon. R.J. Ritson: Never in here!

The Hon. R.I. LUCAS: No, never in here, but the important ones—the ones that we all know have to be delivered to that awesome body, the State Council of the Liberal Party. Members of the Liberal Party will miss some of the familiar memories of Bob—the solitary figure on the front steps of Parliament House having a quick puff as a result of the ban on smoking in Parliament House; the awesome combination of pie, sauce and Coke for breakfast, followed by a gherkin and pickled onion roll with Coke for lunch. I was never game to ask Bob what he had for dinner, or indeed follow him.

I think the staff will also miss him: whenever they found a set of lost keys in Parliament House they knew to whom they belonged—invariably they were Bob's. I am sure that when they find keys in the future they will have trouble finding who owns them. If I can be permitted an in-joke that perhaps only Bob and one or two others might know: Bob's infamous impersonation of a Harrier jump-jet whilst visiting a softwood plant in the South-East will remain fond in my memory and the memory of at least one or two other members of the Liberal Party in the Legislative Council.

I would like to place on the record my personal thanks and thanks on behalf of the Party to Bob for his personal friendship to me and to all members. I would like to thank him for the support that he gave me as a new Leader in the Legislative Council, and in particular his unfailing loyalty to the Liberal Party all through his

14 years of service in this Chamber and for a number of years in the organisation prior to that. In my view, it is the Bob Ritsons of the parliamentary Party and the organisation that are the cement that bind political Parties together. His loyalty to the Party, his loyalty to the Leaders over that period, was unstinting. He never failed to provide support whenever it was required, and on many occasions offered it whenever it was needed.

I thank him for the work in this Chamber that he did on behalf of the Party as Whip in recent years. Together with the Whips of the Government Parties he has served to provide for the efficient and productive functioning of this Chamber. I thank him for the contribution that he has made to the Legislative Council and to the Parliament as an institution. Bob has had an unfailing faith in this parliamentary institution, in particular in the Legislative Council as an important part of this institution. All members know that on occasions there are others outside this Chamber who occasionally perhaps doubt the worth and productivity of either the Chamber or members in it, and certainly that could never have been said of Bob Ritson.

I look forward to keeping in touch with Bob, as I know he will with all of us in this Chamber. As he said, he has friends not only in the Liberal Party but in the Labor Party, in the Democrats and amongst the staff as well. I wish him well for the future. I am sure that that future will include not only some gem cutting but also a good amount of trout fishing.

The Hon. I. GILFILLAN: On behalf of the Democrats, I support the motion and thank the staff for the efficient and friendly service of all the departments that we benefit from in this building. It is an interesting experience to have known Bob Ritson over the 10 years that I have been in this place. I do not suppose that it is too much of a truism to say that Bob is unique. I cannot say that Bob Ritson is like somebody else. Often you can say that someone is like someone else, but Bob seems to be like Bob and that is where the sentence ends. In the 10 years that I think back, I have often enjoyed the originality of Bob's wit, the vast knowledge that he can

seem to draw on in appropriate times for his contributions to this place. Sometimes one perhaps has wondered how far and deep that mine of knowledge could go, and how long the speeches could continue with fresh material—limitless, one contemplates.

The two things I conclude with in my reflections on Bob are, first, that he joined me on the select committee investigating the South Australian penal system (prisons). It is not a happy area of South Australian life to investigate and it has drawn us all as a committee team into some very stressful and challenging aspects. I have admired Bob's compassion and his very penetrating ability to assess situations, particularly in the specialty of the mentally disabled in our prison system. I want to put on record formally my deep appreciation for your help, Bob, and the very wide contribution that you have made and, I am pleased to say, will continue to make on that committee.

I agree with you that you have been able to avoid, as far as I can see, ever having become personal in your observations in this place. I have always found you most courteous in any dealings that I have had with you, except perhaps when we clashed over the gun laws—when I found an anonymous cartoon on my desk of a shooter with a gun shooting holes in his gutter with possum skin on his head. I suspect that the soon to be retiring member might have been at the bottom of that. But, I enjoyed that little exchange and I thank you, Bob, for your contributions to enriching our life in this place while you have been here with us.

The Hon. CAROLYN PICKLES: I support the motion. I rise particularly to make some remarks about Bob from my former position as Government Whip in the Legislative Council, and also to pass on the regards of the present Whip, the Hon. Ron Roberts, who is unable to be with us here this evening. Ron has asked me to place on record his appreciation for your cooperation throughout the past months, especially in the last few weeks when things have got a bit tedious. You have never lost your temper; you have always provided pairs when asked in a most cooperative way.

Politics is a very funny thing. We come into this place with preconceived notions about who are our enemies, and they have to be I think those on the opposite benches. Over the years those preconceived ideas are either cemented or they change. In the case of Bob, my view of who the enemy is has changed. I say thank you, Bob, for your personal kindness when my husband was ill. I think that your cooperation was very much appreciated both by me and my husband. I would also like to say that at no time do we ever have the difficulties with pairs in this Chamber that they experience in the other place. I think that is most unfortunate. We all have families, we all have things we have to do with our own lives outside this place that make us human beings and you, Bob, have always recognised that; and we appreciate that.

Bob, I know that you will go on to enjoy your life. I am quite sure that you will continue to cut your beautiful stones. I hope that you come in from time to time, as I am sure you will in the next few months, but particularly after your retirement. I hope that you will look to those new horizons that one can look to when one is retiring and not look back with any regret on leaving this place, particularly when one considers that you will no longer have to sit through the night in these rather tedious debates where tempers get a bit testy.

This small tribute that I pay to the honourable member is a reflection of the sentiments of all the members here today. I hope you will enjoy your retirement, Bob, and I am sure that it will not really be retirement but going on to new things.

Honourable members: Hear, hear!

The Hon. K.T. GRIFFIN: Very few members have the opportunity to say 'farewell'. Most members retire without warning when a message is received from the Governor indicating that the Parliament has been dissolved and we are all in full election mode. So, unfortunately, those members who retire at that point do not have the opportunity to say anything to their former colleagues in respect of their experience in the Council. A rare few also leave in other circumstances. In the circumstances where elections are called, similarly, colleagues do not have the opportunity to place on the record the fondness with which they regard retiring colleagues, except during the subsequent Address in Reply. Then, generally, the reference to the honourable member is somewhat more fleeting than on an occasion like this.

The Hon. R.J. Ritson: It's usually when somebody has died.

The Hon. K.T. GRIFFIN: Yes. In some respects that is unfortunate, because it is on occasions like this when we do put aside Party differences and, I think, personal differences to recognise that we all suffer the pressures of politics, overwork and the political infighting that occurs. We can put that aside for a few moments to reflect upon the contribution of a colleague.

Well, Bob Ritson came in after me and he is leaving before me. He entered Parliament after a somewhat unexpected result at the 1979 State election, but all of us I am sure would agree that his arrival in this place was something which added to the Council and to the way in which it operated. He is a thinker. He is principled. He tends to take some time to let you know about some of his inner thoughts, but I have always appreciated some of the deeper discussions I have had with him and within our Party room about issues of principle, because Bob Ritson always does think in terms of principle, and that is very important in politics. You can lose sight of the principle on occasions when, on both sides and in the middle, we tend sometimes to react to what we perceive to be what the media wants, what the media will support and what we think will be most popular in the public arena, without necessarily thinking about the principle that should motivate us on occasions.

Bob Ritson has also been a very loyal member of the Legislative Council, as well as a very loyal member of the Liberal Party. In his work within the Liberal Party he has certainly been prepared to go to great lengths to provide support to the Party organisation as well as to his colleagues. He is very supportive. He is a sensitive individual who I think has developed that sensitivity from the time when he became a medical practitioner and from his time in the real world in the Navy, and that sensitivity has helped in his relationships with all

members in this Chamber and in his presentations, and also in the way he has dealt with constituents' problems. We all have a number of very difficult constituents. Some seem to end up on one's doorstep and one feels you are the last port of call. In my experience Bob has never ever refused to try to give assistance to constituents who fall into that category. He has a certain gentleness which, again, I think is reflected very largely from his medical practising experience.

I think that gentleness is now reflected in the way in which he can cut gemstones and present them with some pride to all of us for our admiration—not that he expects the admiration, but he certainly gets it. The talent that he is displaying there is something which has probably been latent for a long time and is something in which all of us would like to share.

He has been a strong supporter of the bicameral system and the role of the Parliament, and particularly that of the Legislative Council. That is one of the very excellent features that I have appreciated in Bob's reaction to issues in this Council. The hour is late, and there are many more things that one can say about him, but I simply say that, along with all my colleagues, we have appreciated his presence, support and friendship and we certainly look forward to seeing him back here on occasions but, more particularly, we hope that the next step of his life will be both rewarding and fruitful as well as immensely enjoyable.

The Hon. J.C. BURDETT: I support the motion. First, I join the honourable Attorney in thanking all members of this Chamber, you, Mr President, and particularly all the staff in Parliament House. In view of the hour I shall be brief, but I do want to make a few remarks about my colleague the Hon. Bob Ritson, and I speak as the longest serving member of this Chamber at the present time. I am very conscious, of course, that I will not be very far behind Bob in leaving the Chamber. As everyone knows, I will not be seeking re-election and, therefore, whenever the next election comes, that will be the end of my time here.

I might say that in all that time, which is nearly 20 years now, I have valued no colleague more than I have valued the Hon. Bob Ritson. Like the Leader of the Opposition, the first time I met him was during the Todd campaign in 1977. I remember the occasion when he was preselected. I shared a room with Bob after we lost Government. While we were in Government I had a number of contacts with Bob, which I value very much. I guess I have been as close to him as I have been to any of my colleagues. I have valued his friendship very much indeed. I certainly wish him well for the future. As other honourable members have said, I know how committed he is to his hobby, occupation or profession—I am not sure which—of gemology and gem cutting. He made a very nice ring for my wife, which I remember very kindly. I wish to express very sincerely my appreciation of the friendship which I have had with the Hon. Bob Ritson, and I wish him all the best in his retirement.

The Hon. L.H. DAVIS: I join my colleagues in supporting the motion, and in particular, paying tribute to the 14 years service by the Hon. Robert Ritson, who joined the Liberal Party as a surgeon lieutenant from the Navy and who had had also, as my other colleagues have said, a career as a medical practitioner in the north-eastern suburbs.

Bob and I have been colleagues from 1979. In fact, I came in here unexpectedly on a vacancy when the Hon. Jessie Cooper retired, and Bob Ritson was a candidate at that preselection. If telephone betting had been in place then, I suspect that Bob's odds would have been quite long, but he made what was relayed to me as a brilliantly anti-political speech and came in a very strong third. So, when the Labor Party unexpectedly called that snap election in 1979 (and the only person in the Cabinet who as I recollect opposed that decision is with us here tonight), the Liberal Party had to select a full team. I faced preselection, along with my colleague the Hon. Trevor Griffin and the Hon. John Burdett, and Bob Ritson offered himself and was successful in coming in at number six, with a very powerful speech. As Robert Lucas has said, he joined the Attorney-General as the only person in the past 20 years who has won from the number six spot. He subsequently cemented his place in the team with a very strong position in the 1985 election when he was number three.

I have to say that all Liberals have enjoyed immensely being whipped by Bob Ritson; he has been a very fine whip indeed and he has been very fair with his pairs. It is a very old-fashioned word to use for Bob Ritson, but it is a word that I use deliberately: my colleagues and I—and I suspect all members in this Chamber—are very fond of Bob Ritson, because he is not only a gentleman but he is also a gentle man. He is the thinking person's politician, he has an intellectual rigour and he spells integrity with a capital 'I', and he values that very strongly. He is highly principled and, as we have seen tonight, he has a fluid, flowing, lucid, persuasive speaking style without notes. He has an incredible capacity to go to the nub of an issue quickly—to bone up on a subject quickly and tellingly on a subject that perhaps he knew nothing about until he briefed himself before coming into the Chamber. He has a lovely sense of humour.

He has a special interest, as we all know, in areas which for all of us present strong dilemmas, particularly in moral issues, such as abortion, prostitution and euthanasia, but he also used his medical skills to advantage for the benefit of the Parliament and the people of South Australia. He focused on many health and social issues, such as the mentally ill, public hospitals, rural health, ambulances, child abuse and phoney health cures.

My colleague the Attorney-General, Bob and I served on the two random breath test committees in the early 1980s which introduced far-reaching legislation. I well remember the three of us, along with the other members of the committee, going to Chloe's Restaurant one night, with a policeman in tow, checking our blood alcohol levels after every third or fourth drink. At the end of the night I was lucky because I only had to walk home; I lived only a couple of hundred metres up the road; but the others were perhaps not so lucky. I remember that the Attorney distinguished himself that night and Bob had a very credible result, but the highest result of all, ironically, was the *Sunday Mail* reporter who covered it,

together with the photographer; as I recollect, the reporter blew .11.

Bob made headlines in 1986 when he said that when it came to health men were the weaker of the sexes, and with that comment he brought rare agreement from the then Minister of Health, Dr Cornwall. He is the only politician in South Australia who has had an interest in issues on the land, in the air and in the sea. I think the two areas that I remember him for best were his very persistent, vociferous and ultimately successful fight for the State rescue helicopter and the decompression chamber for divers.

One of the great sadnesses for him was the failure to take heed of his warnings which were issued not only as a politician but more particularly with his professional knowledge in those areas. That was perhaps one of his great regrets: that the Government of the day did not act sooner in those two matters. So, Bob Ritson's departure from this Chamber will be a sad loss, because he was a great character and, as we have said, a great thinker.

The Hon. R.J. Ritson: I'm still alive!

The Hon. L.H. DAVIS: Yes, that's right. But he will be a sad loss for this Chamber as a politician. We have all valued him as a friend and wish him well in his future.

The Hon. T. CROTHERS: I will be fairly brief, but I must go on the record in respect of Bob Ritson. What can you say about Bob Ritson? It has mostly been said. He is a qualified medical man; obviously no fool, but yet he is a gentle, humble man. In my view, a rare human being; a man of absolute principle and integrity, and he will be sorely missed by us all in this Chamber. He is a rare breed. During the time that I have got to know Bob, I have found we have a couple of things in common. He was in practice in Elizabeth South with a primary school chum of mine called Bayley and, indeed, we both have had some connection with the sea.

He was a serving Lieutenant Commander in the RAN, while I was a more humble ship's carpenter. Of course, many a night when we were having discourse, much salt water would be wrung out of both our pairs of socks relative to our deep and abiding interest in matters in respect of the maritime calling some people have followed during their lifetime. I had to put that op record. He will be sorely missed not only by me but by everyone else in this Chamber who values that humble gentleness and that absolutely unbridled and principled honesty and integrity. Bob, I say to you *valete,* Robert Ritson—and from your years of practising as a medical man you would understand that, and the legal fraternity would also understand it. I say to you, farewell, Bob Ritson, at this early hour of the morning, but not goodbye.

Finally, I would like to say that there will be scarcely a dry eye in this place, and perhaps you could render us all one last service by having us all line up so you can give us a free inspection of our optics! Good luck, Bob, and goodbye, although it is only temporary. I am sure we will see you, and that you will keep in touch with us all. I know that I speak for all members in this Chamber when I say that I trust and hope that your replacement can fit into your shoes, because they are undoubtedly a fairly large pair of shoes for anyone to have to fill. Thank you, Bob, for all you have ever done for me and for the kindness you have shown me. I know that that echoes the sentiments of all the members.

The Hon. M.S. Feleppa: Especially for the lovely ring he gave to you!

The Hon. T. CROTHERS: He didn't give it to me, but it was very nice.

The PRESIDENT: Before I call on the Attorney-General to conclude the debate here tonight, I would like to put Bob first on the list in winding up this session. I would like to pay tribute to the Hon. Bob Ritson. He was elected to this Council in 1979. At that tine there were six Liberal members, four ALP members and one Democrat. I happened to be one of those ALP members, so we have shared almost 14 years together. During the time I have known Bob he has been a man of integrity, and his views have always been acknowledged and taken notice of in this Council. I for one wish him well in his future activities, whatever they may be. I hope he has a long and healthy, happy retirement.

I would also like to pay tribute to our newly appointed Clerk, who was appointed to that position on the retirement of Clive Mertin after serving 30 years in this Parliament. During our new Clerk's brief period in this position, I would acknowledge the technical improvements that have been initiated. Members may not be aware that for the whole of this session the Notice Paper and the minutes of the proceedings of the Council have been produced in-house.

The Council was a trail blazer in this Parliament in electronically mailing this data to State Print, which merely produces multiple copies of the same. This has been done by making efficient use of the limited resources of this Council. During this and previous sessions I am aware of the procedures in which the Council is involved which necessitates waiting for the exchange of messages. That occurs, of course, only towards the end of the session. I trust that all members are aware that the mere passing of a Bill in this Council is not the end of the process. Amendments to the legislation are often considerable and must be scheduled. This involves compilation, word processing and photocopying. Multiple copies must be processed and this is done by our clerical officer, Margaret Hodgins, who has excellent keyboard skills, and then careful checking must take place before transmission to the other House. This work must be undertaken while the Council continues with the other business of the day, and this places considerable strain on the staff.

Members should be aware that technology and further staff could not make the process any more efficient. It is hoped that this factor is recognised by all members whilst waiting for messages between the Houses at the end of session. This does not occur when we are sitting the next day but does occur at the end of session, and I think allowances should be made.

I would also like to congratulate Trevor Blowes, who has been appointed to the position of Black Rod, and also Chris Schwarz, who has assumed the position of Clerk Assistant. I give this recognition unstintingly as I feel not only are they doing a fine job but they have a dedication to the ideals and principles of Parliament and especially of the Legislative Council.

I would also like to acknowledge the messengers. I saw one of them riding home last night on a push bike, so he is obviously keeping himself fit with the late nights.

It is a long, hard gruelling day. We leave when Parliament finishes but many of the staff are left here for two hours after we go home. The next morning when we are back at 9 o'clock for meetings we find it fairly traumatic but the staff are back for those same meetings with two hours less sleep than the members have had towards the end of session.

I would like to extend my thanks to the *Hansard* staff, the caretakers and the catering staff. We farewelled one of the catering ladies today after 23 years of service to the Parliament. Linda lived in-house during the early part of those years as did also the manager of the Catering Division at the time. They go back to the time when we had bedrooms and bathrooms and some of the staff used to live in Parliament House. Linda, who was one of the leading cooks in our kitchen, has looked after the staff for 23 years, and has looked after me for 14 years—and it shows. I would like to wish her all the best in her retirement.

I do not know, when we come back, whether it will be a long or short session, but I hope everyone has a good break. I thank all members for the goodwill and co-ooperation which I believe has existed during this session in the Legislative Council.

The Hon. C.J. SUMNER (Attorney-General): I acknowledge that the Hon. Dr Ritson has announced his retirement, which he did flag to me before I moved this motion, but I did not comment on that fact in anticipation of his retirement. However, I would now like to join other members in saying one or two words about him, although most of what I can say has already been said in one way or another.

The Hon. Dr Ritson said in his speech that he did not think that the circumstances of his retirement would have much effect on his Party and the House, or he said the effect on the Party and the House would be minimal. I think he was referring to the time at which he has chosen to retire, but I do not know about his effect on the Liberal Party being minimal because I am not really privy to the inside workings of the Liberal Party, but I would like to suggest that the honourable member's retirement is not likely to be a matter that has a minimal effect on the House. He is being far too modest in that respect. I believe that the Council will be poorer for the honourable member's departure. The Hon. Dr Ritson is not a stereotyped politician: he is very much a real person; he had a career before politics and I suggest that he will have a career after politics.

One of the problems today is that many members who come into the Parliament do not actually have a career outside of politics or before politics; their whole life has been politics. It seems to me that that means that the Parliament loses some diversity from which it would otherwise gain. Nevertheless, the Hon. Dr Ritson, as I said, had that substantial career before politics, as a medical practitioner in the Navy, and I think he brought that experience to his position in the Council.

As has been mentioned, he is a man of intellectual honesty and a person with genuine concern for issues—the issues he took up and for the people he dealt with. He mentioned in his contribution that he did not have much taste for personal attacks, and I know that he steadfastly eschewed personal attacks during his period in Parliament. I have acknowledged in the past, and I do so again, his private support when regrettably some of his colleagues and the Leader of the Opposition in another place at the time launched their personal attacks against me in 1988 in this Parliament. I appreciate greatly the fact that he was one of the very few who showed me some private support at that time, no doubt reflecting his personal antipathy to the politics of the personal attack.

I will regret the fact that the Hon. Dr Ritson is leaving the Parliament for all the reasons that I and other members have outlined, which to greater or lesser extent reflect my own experiences. But there is another cause for regret, of course, which has already been hinted at by some members, and that is that I will be left as the only person in the Legislative Council who has managed the very amazing feat of getting into Parliament at No. 6 on the Legislative Council ticket. So, to the honourable member, I am sorry that you are leaving and leaving me as the only person in that illustrious position. Given the nature of politics at the present time it might be some time before someone else gets in at No. 6 on any Party's ticket. However, I regret the fact that the Hon. Dr Ritson is retiring, but I wish him well in his career after politics.

Motion carried.

CRIMINAL INJURIES COMPENSATION (MISCELLANEOUS) AMENDMENT BILL

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

ADJOURNMENT

At 2.30 a.m. the Council adjourned until Tuesday 8 June at 2.15 p.m.