LEGISLATIVE COUNCIL

Tuesday 1 July 1997

The PRESIDENT (Hon. Peter Dunn) took the Chair at 2.15 p.m. and read prayers.

ASSENT TO BILLS

His Excellency the Governor, by message, intimated his assent to the following Bills:

Associations Incorporation (Miscellaneous) Amendment,

Casino,

Friendly Societies (South Australia),

Gaming Supervisory Authority (Administrative Restructuring) Amendment,

Liquor Licensing (Administrative Restructuring) Amendment,

Statues Amendment (Pay-roll Tax and Taxation Administration),

Statutes Amendment (References to Banks),

Statutes Amendment (Water Resources),

Tobacco Products Regulation (Miscellaneous) Amendment.

PAPERS TABLED

The following papers were laid on the table:

By the Minister for Education and Children's Services (Hon. R.I. Lucas)—

Regulations under the following Acts—
- Development Act 1993—Referrals and Concurrences
- Electricity Act 1996—General
- Electricity Corporations Act 1994—Temporary Non-Commercial Provisions
- Gas Act 1997—Principal
- Southern State Superannuation Act 1994—Administrative Charge
- Superannuation (Benefit Scheme) Act 1992—Administrative Charge
- Tobacco Products Regulation Act 1997—Principal
- Waterworks Act 1932—Revocation of Schedule 2

By the Attorney-General (The Hon. K. T. Griffin)—

- Animal and Plant Control Commission—Report 1996
- Soil Conservation Boards of South Australia—Report, 1995-96

Regulations under the following Acts—
- Bills of Sale Act 1886—Fees
- Criminal Assets Confiscation Act 1996—Principal
- Gaming Machines Act 1992—Fees
- Public Corporations Act 1993—ETSA Corporation Board
- Real Property Act 1996—
  - Fees
  - Land Division Fees
- Registration of Deeds Act 1935—Fees
- Strata Titles Act 1988—Fees payable to Registrar-General
- Veterinary Surgeons Act 1985—Fees
- Worker's Liens Act 1893—Fees

Summary Offences Act 1953—
- Dangerous Area Declarations
- Road Block Establishment Authorisations

By the Minister for Consumer Affairs (Hon. K.T. Griffin)—

Regulations under the following Acts—
- Liquor Licensing Act 1985—
  - Long Term Dry Areas
  - Revocation of Eighth Schedule

By the Minister for Transport (Hon. Diana Laidlaw)—

Regulations under the following Acts—
- Motor Vehicles Act 1959—
  - Exemptions and Reports
  - Expiration Fees—Revocation and Substitution
- Physiotherapists Act 1991—Qualifications
- Public and Environmental Health Act 1987—Disposal or Re-use of Water
- Road Traffic Act 1961—
  - Expiation Fees—Revocation and Substitution
  - Inspections—Fees
- South Australian Health Commission Act 1976—Medicare Patient Fees—Variation
- Water Resources Act 1997—
  - Penrice Exemption
  - Principal
  - Roxby Downs Exemption.

TEXTILE, CLOTHING AND FOOTWEAR INDUSTRY

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a copy of a ministerial statement made by the Premier in another place today on the subject of the textile, clothing and footwear industries.

Leave granted.

TELECOMMUNICATIONS

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a copy of a ministerial statement made by the Minister for Housing and Urban Development in another place on the subject of telecommunications facilities.

Leave granted.

TAFE SCHOLARSHIP

The Hon. R.I. LUCAS (Minister for Education and Children's Services): I seek leave to table a ministerial statement made by the Minister for Employment, Training and Further Education in another place today on the subject of an information technology scholarship.

Leave granted.

QUESTION TIME

SCHOOL FEES

The Hon. CAROLYN PICKLES: I direct my question to the Minister for Education and Children's Services. Given the Minister's statement to the Estimates Committee that 'schools do not have the authority to take people to court for the gap,' that is, the gap between the School Card entitlement and the maximum compulsory fee, will the Minister detail which clause of regulation 229A of the Education Act exempts children in receipt of School Card from the payment of fees required under the regulation?

The Hon. R.I. LUCAS: I am certainly happy to bring back a considered response to that question. I must admit that I have been somewhat bemused by the public posturing of the Leader of the Opposition in this Chamber on this—

The Hon. L.H. Davis: That was a powerful opening question.

The Hon. R.I. LUCAS: Exactly, very powerful—particularly when, in substance, it is wrong. In April or May this year the department issued instructions to all schools which made it quite clear that verbal instructions have applied

since the start of the year in relation to any possible court action for the gap fee. I am happy to provide to the honourable member a copy of that departmental advice that was sent to 650 school principals. There is, therefore, nothing secretive about it. In effect, it is an open instruction about how the school fee or materials and service charge policy is to be implemented, and it indicates quite clearly the Government's policy position on this issue. As I said, I was somewhat bemused that, having toiled all day to try to get a story out of the Estimates and being singularly unsuccessful, the Leader of the Opposition managed to turn out a press statement claiming that the Government had done a 'backflip' on schoolcard or school fee collection policy. The media treated this claim with the disdain it deserved, because I do not think it ran anywhere but for one brief radio mention—

An honourable member: Not even the *Tribune*?

The Hon. R.I. LUCAS: It might get a run in *Direct Action* or the *Tribune* or *Labor Herald*. It might get a run in the *PSA Review* or the Australian Education Union journal, but the claim certainly did not light up the local media on Estimates day, because it was wrong. I will be quite happy to—

The Hon. A.J. Redford: Normally that wouldn't stop them.

The Hon. R.I. LUCAS: I would never be as unkind to members of the local media.

The Hon. A.J. Redford: I was talking about the Labor Party.

The Hon. R.I. LUCAS: Normally that certainly would not stop the Labor Party, and on this occasion it did not stop it trying to beat up the story, but it was singularly unsuccessful. There is nothing new in what I said to the Estimates Committee and in what I am saying this afternoon. It has been the Government's position for some time, and the departmental advice based on the legal advice provided to the department made clear that the department was not allowing schools to pursue this issue in the courts. We have made that view known to principals and members of school councils who over the past few months have inquired about the Government's position in relation to the issue. The department's position has been based on the departmental officers' advice, together with the advice that departmental officers have received from Crown Law officers and other legal officers in relation to the intention of the regulation in this area. I am happy to take on notice the specific legal aspects of the question that the Leader has asked and bring back any information if that is at all possible.

MIMILI SCHOOL

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Aboriginal Affairs, a question about asbestos at the Mimili school.

Leave granted.

The Hon. R.R. ROBERTS: The issue of the Mimili school was first raised in this House in October last year. It was then that I learnt that a school building containing asbestos had arrived at the Mimili School without approval having been sought from the relevant Aboriginal authorities who oversee the lands in the Far North. I asked the Minister for Education and Children's Services a series of questions over the next few months and received far from satisfactory responses. This culminated in a censure motion against the Minister for Education and Children's Services. On 19 March 1997, the day the motion was voted upon, elders from the Mimili council made a 10 hour plus trip to Adelaide to listen to debate on this important motion in the Legislative Council. They tell me that when they left our Parliament they were shocked and disgusted. At one point in the debate (page 1255 of *Hansard*) I said to the Minister, 'I am no longer confident that this motion will make one iota of difference,' and the Hon. Rob Lucas replied by way of interjection, 'It won't'. So far, that has proved to be the case.

I also asked questions on 6 November 1996 of the Minister in this Council representing the Minister for Aboriginal Affairs. Unfortunately, that Minister did not give us a reply at all. All the replies that I have received have not solved the problem for these children and those education employees working at the Mimili school in the Far North. I have learnt recently that the building is still on site at the Mimili school and that in recent weeks the Mimili school council had to construct a fence around the building at a cost of $5 000. Obviously, it will try to get some reimbursement for the cost of this from DECS.

Members of the Mimili council feel that they have been shunted by the system and this Government and are totally devastated that some eight months after the delivery of this asbestos building to the school on their lands they are still without a remedy and the children are still being exposed to the asbestos fibre on a daily basis. I am further advised that at present the building is in an absolutely wrecked state and that if it were not for the fence we would have a real emergency on our hands. My questions to the Attorney-General, representing the Minister for Aboriginal Affairs, are:

1. Will the Minister intervene in this matter to protect the health and wellbeing of the children currently studying and playing in the close vicinity of these buildings?

2. Will the Minister inquire why the Mimili school council was forced at its own expense to construct a fence around the offending buildings?

The Hon. K.T. GRIFFIN: It is an interesting tack: now to go for the Minister for Aboriginal Affairs. The honourable member was not able to score any points in relation to his questions to the Minister for Education and Children's Services, so he tries another tack; you cannot blame him for that. I will refer the questions to the Minister in another place and bring back a reply.

RECYCLING

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for the Environment and Natural Resources, a question about recycling.

Leave granted.

The Hon. L.H. Davis interjecting:

The Hon. T.G. ROBERTS: The Messenger Press is a good source of information in relation to what is happening out in the suburbs, and I thank the Hon. Legh Davis for raising the issue. In the *Guardian* on page three the Messenger Press has raised an issue that perhaps the *Advertiser* may have been interested in if it was interested in the big picture issue of recycling and waste management in this State. The Marion City Council has just been forced to put together a budget from which $190 000 will be removed because of Recycle 2000's decision to remove a rebate paid on recycled material. The rebate of $10 per tonne on recycled green waste and other recycling materials has been removed and this means that the Marion City Council, which is probably one

of the best examples of recycling practice in this State and possibly one of the best examples of a council coming to terms with the issue of recycling in this country, has been dealt an unnecessary blow in terms of a situation where a rebate has been lost when the Marion City Council was doing what I would have thought most State Governments would want to see, namely, minimising the amount of refuse being put into land fill. As members on both sides of this Council know, with the closure of metropolitan dumps and outer metropolitan area dumps Adelaide is at crisis point and is now put in the position of formulating a policy for the next millennium.

The closure of these dumps has mainly been brought about by the burial in outer metropolitan area dumps and sometimes inner metropolitan area dumps of material that should never go to land fill. We now know that a lot of recyclable material put into kerbside collections and rubbish bins could be removed by a system such as the one being put together in Marion council and that therefore the cost and environmental pollution that comes with land fill could be reduced.

The *Guardian Messenger* states that the decision by the Waste Management Authority/Recycle 2000 will see the scrapping of the $10 a tonne rebate for councils selling green waste and other recyclable materials. It also claims that the Marion council will suffer most from the withdrawal because it has implemented Australia's most successful kerbside recycling system, with almost 60 per cent of waste recycled. The withdrawal, which is effective from 30 June, has angered the council, which has been trying to condense its spending for the next two years due to a State Government enforced rates freeze.

Therein lies another problem. Councils are starting to put together waste management strategies with caps on their rates but that does not allow them to have a lateral program that incorporates increased spending. Councils that have started to extend services will run into this problem of rate capping. If one adds rate capping to rebate withdrawal, one can better understand the problem faced by the Marion City Council.

The article goes on to state what the position of Recycle 2000 is, and it is important to get that on the record as part of my explanation. The Executive Officer, Malcolm Campbell, said that the rebate system was dropped because it wanted to extend market and research programs on green waste products. Mr Campbell said that green waste was by far the largest component in landfill dumps and a staged implementation of kerbside collection throughout Adelaide was needed. That is the prime motivation of the Recycle 2000 board: committing the recycling rebate to marketing and research for green organics. There are competing uses for the rebate between which the Government can differentiate and perhaps either reintroduce the rebate to the recycling program or allocate adequate funding to Recycle 2000 for the research that it requires to complete an almost-concluded job.

My question is: if the rebate for recyclable material is not to be reintroduced, will the State Government work with Recycle 2000 and local government to develop another form of subsidy to encourage local government to maximise returns for recycling and produce a more effective and efficient way of recycling waste material?

The Hon. DIANA LAIDLAW: I will refer the honourable member's question to the Minister and bring back a reply.

SOUTHERN EXPRESSWAY

In reply to **Hon. T.G. CAMERON** (3 June) and answered by letter on 28 June.

The Hon. DIANA LAIDLAW: In response to the honourable member's question without notice asked on 3 June 1997 I advised that I would ask the Department of Transport to ensure further contact is made with Mr Hall regarding the alleged effects of construction of the Southern Expressway on nearby residents homes. I can now confirm that a representative of Macmahon Contractors Pty Ltd spoke with Mr Hall on the morning of 29 May to discuss Mr Hall's claim which, at that time, had not been submitted. Subsequently a claim was submitted, which is now being considered as an insurance issue.

NUMBERPLATES

In reply to **Hon. T.G. CAMERON** (28 May) and answered by letter on 10 June.

The Hon. DIANA LAIDLAW: I provide the following information in response to the honourable member's contribution to the Matters of Interest Debate regarding numberplates. As the honourable member will appreciate, clear and legible numberplates are an essential factor in the enforcement of road law. Numberplates fitted to a vehicle must comply with the standard design and specifications which have been prescribed for each type of plate.

The recent campaign conducted by the South Australian Police Force, in association with the Registrar of Motor Vehicles and the Department of Transport (DoT) was aimed at ensuring compliance with the specifications for numberplates and that all letters and numbers are clearly visible. The campaign was conducted from 3 March 1997 until 30 May 1997, and involved advertisements in the *Sunday Mail*, as well as an advertisement in 26 regional newspapers and four metropolitan newspapers. In addition, a total of 113 thirty second advertisements, to support the press activity, appeared on two metropolitan radio stations over the duration of the campaign.

As part of the campaign, the South Australian Police Department also issued warning notices to vehicles which they understood to be displaying illegal or illegible numberplates. The registration numbers of vehicles issued with warning notices have not been recorded by either the South Australian Police Force or DoT. The warning notice clearly advises motorists to contact any Registration and Licensing Office or State Wide Numberplates to take advantage of the $10 replacement plate offer.

With regard to the issue of plastic numberplates, I have been advised by the Registrar of Motor Vehicles that any vehicle issued with an alpha-numeric number, and the plates were obtained prior to 30 June 1981, may continue to display those plates providing that the specifications of the plate(s) complied with the regulations at the time. Similarly, any vehicle with an alpha-numeric number issued prior to 30 June 1981 and bears a replacement numberplate which was obtained prior to 5 September 1985, may continue to display those plates providing that the specifications of the plate(s) complied with the regulations at the time. Numberplates manufactured after 5 September 1985 are required to be metal embossed.

WEST LAKES FISH

In reply to **Hon. T.G. ROBERTS** (28 May).

The Hon. DIANA LAIDLAW: The Minister for the Environment and Natural Resources has provided the following response in conjunction with information received from the Minister for Primary Industries.

1. A range of investigations have already been undertaken in relation to the fish kills which took place over the weekend of 10 and 11 May 1997.

The first reports of dead fish were received at approximately 12 noon on Saturday 10 May 1997. Officers from Primary Industries South Australia (PISA) Fisheries attended. At that time there were numerous dead mullet on shore and immediately near shore in water up to one metre in depth.

A number of large estuarine catfish were found in very shallow water. The fish were clearly distressed and the officers were able to catch the fish by hand. Three large specimens were collected and dispatched for veterinary examination.

The lake water was visibly discoloured, showing a pale brown/golden colouration indicative of the presence of microscopic algae in large numbers. Water samples were dispatched to the Australian Water Quality Centre for analysis.

On Monday 12 May 1997 further mortalities were reported. Officers were able to confirm that mullet, bream, catfish and flounder had incurred mortalities. Several king prawns were observed in shallow water, exhibiting symptoms of stress. Local residents were interviewed and reported that medium sized mulloway had been affected although the officers were unable to confirm this.

Veterinary examination of the fish showed that all had swollen and inflamed gill tissues but there was no immediately obvious cause of the inflammation.

Water samples revealed the presence of high numbers (8 500 cells per millilitre) of a microscopic alga known as *Gyrodinium galaetheanum*. This species is known to affect fish by adhering to the gill tissue, causing gill inflammation and deterioration and leading to death by suffocation. The alga does not generally affect smaller fish as the alga cannot enter the gills of small fish.

Departmental officers established contact with staff from the Department of Transport and were able to ascertain that no clean seawater had been introduced into West Lakes for approximately two weeks.

On the weekend of 3 and 4 May 1997 approximately 35mm of rain had fallen in Adelaide. This was the first significant rain for the year and as a result a large amount of stormwater had been introduced into the southern end of West Lakes. This influx of stormwater created conditions favourable to the growth of the microscopic alga. The presence of high numbers of algae in the water also created oxygen stress which was further exacerbated by the oxygen demand created by the influx of poor quality stormwater (containing large amounts of urban run-off such as oil, tyre compounds and animal faeces).

Under normal conditions, the influx of stormwater would have been associated with ongoing introduction of clean seawater which would tend to flush the lake clean and minimise the chance of conditions favourable for an algal bloom.

On Monday 19 May 1997 fish kills were reported near Delphin Island. Similar investigations established the presence of the same algae which had been identified in the earlier mortalities. On Monday 26 May 1997 further mortalities of fish occurred near the northern end of West Lakes. The circumstances were similar to the previous events and the department is still awaiting the results of veterinary examinations and water analysis.

2. The Fisheries Act 1982 does not provide for prosecutions in circumstances such as these. The EPA does not licence the activity undertaken by Department of Transport to repair the lake edges at West Lakes. Further, as the investigation found, there was no release of a polluting substance into the waterway that caused the death of fish within the basin. As a consequence, legal opinion indicates that there are no grounds for prosecution associated with this event under the Environment Protection Act 1993.

3. The reason for the relatively poor flushing regime of West Lakes is the need for maintenance of the lake edges. The original edging is now some 25 years old and parts of it have shown significant subsidence. If left unattended there is every likelihood of land subsidence with the associated cost of severe damage to houses along the lake. Not only would there be a cost to householders, measured in millions of dollars, but much of the amenity value of the lake would also be destroyed. Department of Transport personnel will be encouraged to develop a contingency plan to cover similar events that may occur while undertaking their remedial works at the lake.

TELEPHONES, MOBILE

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Attorney-General a question on matters of privacy.

Leave granted.

The Hon. M.J. ELLIOTT: Two weeks ago I wrote to the Attorney-General on the issue of privacy in relation to an article in *Search* magazine of April 1997, which details the ability of researchers to track down mobile phones to a distance of 100 metres. The article was written by Chris Drane, Professor of Computer Systems Engineering, of the University of Technology in Sydney, and it reports how his research team successfully tested the prototype of equipment which was able to pinpoint the location of a mobile phone within a distance of 100 metres.

The article listed a number of potential applications for the technology, some of which are clearly very useful. For instance, if a person makes an emergency call and cannot say precisely where they are at the time, it would be possible to get a fairly good fix on where they are. In the article, the inventor of this technology also recognised that there were some downsides that may require legislation. His particular concern related to privacy invasion, suggesting that police could use this technology for purposes well beyond its intended use. He was calling for swift action to put in place technical, legislative and operational procedures to minimise the chances of misuse.

He notes that with any ordinary sort of phone tap police need to have a warrant before implementing such a tap, and his suggestion is that, if they wish to use the technology to locate an individual outside specified circumstances that other emergency services may want it for, that also should happen by way of a warrant.

The Hon. T.G. Roberts: Can they intercept the message?

The Hon. M.J. ELLIOTT: As I understand it, they would require a warrant for an interception of the message itself as distinct from just using it as a means of locating an individual. As I said, I wrote to the Minister on this matter and in response he said that he had referred it to an officer within his department. For the record, I would like the Attorney-General's thoughts on the matters surrounding this issue.

The Hon. K.T. GRIFFIN: It is correct: the honourable member did write to me and I did reply indicating that I was having one of my legal officers examine the issues. It is not a matter that one can answer in a straightforward fashion. My recollection was that it was not so much directed towards issues of police interception of telephone calls but more to the capacity of anybody to gain access to the technology and thereby identify the location of the mobile phone.

The telephone interception powers of police are covered by Federal legislation. I see no difference between tapping into a physical line and intercepting mobile telephone conversations. In both instances a warrant is required, and any telephone calls that are intercepted by police without such procedures having been followed stand a very good risk of being thrown out of court as evidence that is inadmissible.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: I understand that, but the honourable member did indicate telephone interception and indicated that for ordinary phone taps police must have a warrant. What I am saying is that, in the circumstances of a mobile telephone interception, my understanding is that the Commonwealth law makes no distinction between those who might want to intercept by tapping into the physical phone line landlines and those who intercept conversations conducted through mobile telephones. For that reason, there is no concern, I suggest, about the application of the law.

There is already available telephone technology for landlines that is able to identify the caller's number, and there are issues about that which, I suppose, one could suggest are in the same category as that issue raised by the honourable member about being able to locate the person making a mobile telephone call.

The Hon. M.J. Elliott interjecting:

The Hon. K.T. GRIFFIN: We are talking about the principle. I am not aware of being able to track someone if their telephone is turned off. I am saying that technology is available that enables a caller's number to be identified. I understand that that is used in some instances to detect

nuisance telephone callers and for other purposes, and there is a debate in the telecommunications industry about whether that technology should be freely available. Of course, if you are in the Public Service and linked to the State Government PABX system, your telephone will automatically flash up onto the screen, when it is being called, the number of the caller. So, the technology is available. In terms of locating the mobile telephone caller, there are some issues to which I do not have the answers at this stage. How does one police legislation that might put some prohibitions on the availability of the technology?

Also, there are issues that have a national connotation rather than just a State-based connotation. They are issues which have been legitimately raised and which, in good faith, I am having examined. When some further work has been done and there is something to report to the Council, I will be happy to do so.

MULTICULTURAL AND ETHNIC AFFAIRS OFFICE

The Hon. J.F. STEFANI: I direct my question to the Minister for Education and Children's Services, representing the Minister for Multicultural and Ethnic Affairs. Does the Minister have some information in relation to questions asked by the Hon. Paolo Nocella on 4 June?

The Hon. R.I. LUCAS: I am delighted that the honourable member has asked me this question. When last we were together a question was asked by the Hon. Mr Nocella in relation to a series of allegations and claims that Mr Nocella and the Leader of the Opposition in another place had been making. I made some initial comments and indicated that I would make some inquiries to better inform myself and I said that, when I had that information, I would seek to share it with members in this Chamber.

Having done that, I want to place on the record information in relation to some of the despicable actions of the Hon. Mr Nocella in relation to this issue. First, as background to this issue, I want to refer to a letter from Mr Gardini, President of ANFE, to the Leader of the Opposition (Mr Mike Rann) on 30 May 1997. Whilst I will not read the entire letter, Mr Gardini stated:

> ANFE was dismayed that you [Mr Rann] presented Parliament with so-called 'briefing notes' alleging political leanings both on our part and that of three other organisations. It was alleged that these notes had been prepared for the Premier. We never believed that any Minister would be so foolish as to request such briefings.

In conclusion, Mr Gardini states to Mr Rann:

> As the one who has made temporary political capital out of this incident, you should have foreseen the outcome, and ANFE expects a public and unreserved apology from you.

Subsequent to that, on 4 June, the Hon. Mr Nocella asked a question in this Chamber. After the response, he stood up in this Chamber and had the hide to make a number of statements. I will refer not to all the statements he made but to one in particular. The honourable member said:

> The President of ANFE, Mr Alex Gardini, one of the organisations classified politically and described as 'a right wing organisation', this morning commented on 5EBI FM and expressed his dismay that the Office of Multicultural and Ethnic Affairs (OMEA) would get involved in this kind of activity. Mr Gardini, like me, is a former senior member of this organisation and is horrified that these activities resembled the activities of the KGB or, more appropriately, the Polish UB.

Mr Nocella is directly claiming that Mr Gardini on 5EBI FM that morning, like he, was horrified about these activities and had indicated that they resembled the activities of the KGB or, more appropriately, the Polish UB, according to *Hansard*.

On 5 June 1997 a letter was sent to Mr Nocella by Mr Gardini in which it would be fair to describe Mr Gardini as being extremely angry at the Hon. Mr Nocella and the Hon. Mr Rann for what was happening in the Parliament. A copy of that letter was sent to me, as the Leader of the Government in this Chamber and also to the Hon. Mr Rann.

An honourable member interjecting:

The Hon. R.I. LUCAS: On 5 June 1997. Again I will not read all three pages of the letter but I will refer to its highlights. The letter says:

> Dear Mr Nocella,
>
> I refer to your claim yesterday in the Legislative Council that expressed my dismay on radio 5EBI FM that the Office of Multicultural and Ethnic Affairs (OMEA) would 'introduce a practice of recording political leanings and affiliations in the briefing notes prepared on ethnic or community organisations.
>
> I did not do anything of the kind.

Further on, Mr Gardini says:

> We did not want to compound the damage—

he explained what he and his colleague had done on 5EBI FM and he then went on in his letter to Mr Nocella to say—

> already done by what was said by the Hon. M.D. Rann on the day and the wider damage done by the release of the document to the media—

a document released by the Hon. Mr Nocella and the Hon. Mr Rann. The letter continues:

> damage, I may add, that was further compounded by your statement—

that is the Hon. Mr Nocella—

> on Channel 9: '. . . would it be used, one could wonder, for the purpose of allocating grants, multicultural grants. . . '

The Hon. A.J. Redford: Outrageous!

The Hon. R.I. LUCAS: Exactly. As my colleague says, it is outrageous.

The Hon. T.G. Roberts interjecting:

The Hon. R.I. LUCAS: Just be cautious. I would not suggest that you go too far out on the limb defending the Hon. Mr Nocella: there is more to come.

An honourable member interjecting:

The Hon. R.I. LUCAS: Yes, there is more to come. This three-page letter concludes:

> In expectation of receiving an apology [from Mr Nocella].

I referred earlier to *Hansard* of Wednesday 4 June. I received a letter from Mr Gardini dated 8 June.

The Hon. Carolyn Pickles: A very busy man.

The Hon. R.I. LUCAS: He is very busy because he is very angry at both you and your colleagues for what you were doing.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: So the Hon. Ron Roberts is alleging forged documents. We will have that on the record. Thank you.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: Are you horrified?

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: I refer to the letter written to me and dated 8 June 1997.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: The letter says:

Dear Minister

On 5 June 1997 about an hour after transmitting by fax a letter to the Hon. Paolo Nocella MLC, a copy of which I also sent to you, I received the attached seven page fax from the Hon. P. Nocella bearing the following data from the transmitting fax:—

and then there is an identification number—

as well as the time on each page ranging from 16:55 to 16:59 and pages 01 to 07. The number of pages corresponds to the handwritten number of pages including cover sheet on the cover sheet. The cover sheet includes the name and address of sender and a note signed 'P.N.' in a handwriting that appears to be Mr Nocella's.

Page 02 of the document is an extract from *Hansard*, turn 1, page 1 (Legislative Council, 4 June 1997). . . In relation to page 02 I note two matters:

(1) the extract includes less than a third of the matters raised by Mr Nocella, other members and you. Edited out by the Hon. Paolo Nocella are his references to me and your response.

Edited out by the Hon. Mr Nocella were his references to Mr Gardini and the response that was given. How despicable! This is the honourable member who stood up in this Chamber for days on end and who made allegations under the privilege of Parliament—in coward's castle—about the Hon. Mr Stefani, and here he is hoist on his own petard because he has done exactly the same thing. This is the man who was defended by the Hon. Ron Roberts with his foot in his mouth earlier this afternoon.

Members interjecting:

The PRESIDENT: Order, the Hon. Ron Roberts!

The Hon. R.I. LUCAS: What did the Hon. Mr Nocella edit out? Why would the honourable member not want to send all the information to Mr Gardini? What did the honourable member leave out? It must be something embarrassing.

Members interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: I refer to the letter, which continues:

(2) the extract faxed to me by the Hon. P. Nocella—

The Hon. Anne Levy: Extract!

The Hon. R.I. LUCAS: Exactly. He found out that it was an extract afterwards because the Hon. Mr Stefani indicated—

Members interjecting:

The PRESIDENT: Order! The Hon. Ron Roberts, that is not very parliamentary.

The Hon. R.R. Roberts: This is a joke, Mr President—a waste of Question Time.

The PRESIDENT: Order, the Hon. Ron Roberts! If we want to be a kindergarten we will proceed as one, but I do not think we need that sort of parliamentary language or—

An honourable member interjecting:

The PRESIDENT: Order, the Hon. Ron Roberts!

The Hon. R.I. LUCAS: On behalf of my kindergarten students, and as the Minister responsible for kindergartens, I take offence at the way in which the Labor Party is behaving. The honourable member leaves out the following allegation he made in *Hansard*, namely:

The President of ANFE, Mr Alex Gardini, one of the organisations classified politically and described as 'a right wing organisation', this morning commented on 5EBI FM and expressed his dismay that the Office of Multicultural and Ethnic Affairs (OMEA) would get involved in this kind of activity.

This is the Hon. Mr Nocella, one should remember; this is the piece he left out:

Mr Gardini, like me, is a former senior member of this organisation and is horrified that these activities resembled the activities of the KGB or, more appropriately, the Polish UB.

He left that out. Why did the honourable member leave it out? The Mr Gardini's letter to me continues:

As I have indicated in my letter of 5 June 1997, I made no such comments, nor did anyone else on the ANFE radio program.

It was an absolute concoction by the Hon. Mr Nocella: he made it up to smear not only Mr Gardini but also a range of other members in this Chamber. He made it up—

An honourable member interjecting:

The Hon. R.I. LUCAS: He knew it wasn't true and then, when he sent the material to Mr Gardini, he made sure that that bit was edited out. He took out that section from the material that was sent to Mr Gardini. How did Mr Gardini—

Members interjecting:

The Hon. R.I. LUCAS: Exactly.

An honourable member interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: How did Mr Gardini find out that it was an extract? Only because the Hon. Mr Stefani sent him the whole information. All of the information, without editing, went there and that is how he found out that the Hon. Mr Nocella had been involved in a despicable act, which does him no credit at all as a member of this Legislative Council and brings shame on himself, on the Leader of the Opposition in another place and people such as the Hon. Ron Roberts—

An honourable member interjecting:

The Hon. R.I. LUCAS: Exactly.

The PRESIDENT: Order! The Minister for Education and Children's Services is a big boy and can answer his own question; he does not need assistance from Government members.

The Hon. A.J. Redford interjecting:

The PRESIDENT: Order!

The Hon. R.I. LUCAS: As indicated, it was most important that this very selective and despicable act of editing by the Hon. Mr Nocella was picked up by the Hon. Mr Stefani and the truthful information in relation to this issue conveyed to Mr Gardini. Mr Gardini's letter to me further states:

I am satisfied, and I was equally so when I went on radio, that the 'briefing notes' were not requested by either the Minister for Multicultural and Ethnic Affairs nor the CEO of OMEA, that the officer or officers involved in preparing them were reprimanded, told to destroy the document, and never to prepare similar political assessments.

In his letter to me, Mr Gardini concludes:

I find what has happened extremely offensive and distressing.

The Hon. Mr Nocella and Mr Ron Roberts might laugh at the fact that Mr Gardini would find this distressing, but certainly members on this side of the Chamber do not laugh at that sort of distress being felt by a prominent member of the Italian/Australian community in Australia. I am appalled that the Hon. Mr Nocella should take such a flippant and high-handed attitude to the distress being shown by Mr Gardini in relation to this particular issue. Mr Gardini's letter further states:

I have been forced by the publicity created by the allegations made in Parliament to respond in order to protect my reputation and that of the organisation which I serve.

I am dismayed at the approach adopted by the Hons Mr Rann and Mr Nocella in relation to this matter. I would never count myself as a close associate or friend of Mr Gardini, but I have known him for the 10 or 15 years I have served in the Parliament. He has been a most loyal and hard-working senior public servant, serving loyally both Labor and Liberal Governments without fear or favour, giving apolitical advice

to both Liberal and Labor Ministers and Governments, and for Mr Gardini to be treated in such a manner by the Hons. Mr Nocella and Mr Rann, supported by the Hon. Mr Roberts and others in this Chamber, is simply appalling.

I simply ask the Hon. Mr Nocella: will he have the courage and integrity to stand up in this Chamber to admit that he made up those statements which he alleges Mr Gardini made on EBI-FM; and that he explains to members in this Chamber why he would be so malicious and devious as to make up those statements to do damage to Mr Gardini and others? I ask him to unreservedly issue a public apology in this Chamber to Mr Gardini for all the distress he has caused Mr Gardini, his family and his associates.

SCHOOLS, DRUGS

The Hon. P. HOLLOWAY: I seek leave to make a brief explanation before asking the Minister for Education and Children's Services a question about the drug policy in State schools.

Leave granted.

The Hon. P. HOLLOWAY: The Minister will be aware of reports in this morning's *Advertiser* that the Independent Schools Board has issued new drug policy development guidelines for private schools, including the use of contracts between schools, parents and students for students who have previously been caught using drugs, greater control over pain killers, police to be notified if any drugs are found at school, and extensive drug education for students and teachers. The report appearing in this morning's *Advertiser* also quoted Detective Inspector Graham Lough, the police drug and alcohol policy coordinator, as saying that drug use among school students was increasing and that students were able to get any drug they wanted. My questions to the Minister are:

1. Will he inform the Council of the current policy of the Government on drugs in our State schools and, in particular, the policy of the Government towards such issues as the notification of police when drugs are found in schools, the use of painkillers and the use of contracts?

2. Will he release a copy of that policy?

3. Will the Minister say whether he has evidence to support Detective Inspector Lough's contention that drug use amongst school students was increasing, and what has he, as Minister, done to upgrade drug education for students and teachers?

The Hon. R.I. LUCAS: At this stage I am happy to respond with some general comments and bring back a more detailed response for the honourable member. This morning's story appearing in the *Advertiser* is an indication that the problems young people experience in relation to drug use and abuse are not shared by one particular education sector. It is an indication that the independent school sector and the catholic and Government school sectors all need to address the issue of drug use and abuse amongst young people not only within schools but also within the broader community.

The Department for Education and Children's Services has a strong record of drug education programs over a long period of time: it is not something that has been introduced only in recent years. I am happy to bring back a summary of the many, varied and comprehensive programs in terms of trying to discourage—

The Hon. P. Holloway: What about the policy itself?

The Hon. R.I. LUCAS: I am happy to bring back as much detail as possible in relation to the honourable member's questions. The problems are shared problems, and there are comprehensive drug education programs. Drug education is an important part of one of the eight key learning areas within our school system, that is, health and physical education. It is a required part of the curriculum for all students from reception through to year 12. Obviously, the curriculum and how particular issues are tackled varies according to the age of students in a class, and I am also happy to bring back details in relation to those areas.

The policing of drug abuse within a school's perimeter is tied up with our discipline policy—our suspension, exclusion and expulsion policy—and broad guidelines are in place within that policy as to how particular incidents might be approached within the school system. Advice is also given to schools separately in terms of their relationships with the police, police officers and, for example, the use of dog squads within the Government school system. Again, I would be pleased to obtain information for the honourable member on those issues and bring back a considered reply.

DENTISTS

The Hon. A.J. REDFORD: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Health, a question about dental practitioners.

Leave granted.

The Hon. A.J. REDFORD: All members would have received correspondence from the Australian Dental Association on the topic of clinical dental technicians when legislation was before this place. Indeed, the Government in opposing the legislation accepted the assertions put by that body although, I must say, I viewed them with the gravest suspicion. Since then I have had drawn to my attention an article in the July 1997 *Readers' Digest* entitled 'How Dentists Rip Us Off'. The author wrote of a survey she conducted of 37 dentists throughout Australia in obtaining quotes for dental work required to her teeth. Indeed, the author is a qualified dentist. Prior to her commencing her survey she saw her personal dentist of four years and was also examined by three other prominent dentists.

The four dentists essentially agreed that she had very good teeth and that all she needed was a clean and scale. She was told that she had some early decay in tooth number 15 but that it only needed monitoring. The cost of any treatment was estimated at about $60. So, what did she find? In Port Pirie, a young dentist (the first she consulted) charged her $25 for the examination and $40 for a clean and scale and came up with a view entirely in accordance with that of the other four dental practitioners. In Melbourne, a dentist suggested root canal treatment, a crown and the replacement of three fillings, all for $1 340. Another ordered two X-rays, despite the author having had one of her own taken recently, and plaster moulds, and then suggested three fillings at an estimated cost of $1 500. Many dentists recommended sessions with dental hygienists. Another cleaned and scaled her teeth, despite her having had them done by a dentist a few days earlier. Indeed, two hours later she went to another dentist, who announced that she needed a further clean and scale, and that was carried out. Eight days later another dentist showed her a chunk of calculus that that dentist had taken off a lower molar. Another offered to whiten her teeth for the sum of $600.

She writes in summary that only 11 out of the 37 dentists carried out a basic oral cancer check; only 12 prepared a full chart, noting all the work which was required to be done or which had been done; and only four did both. Four out of the

37 wanted to fill tooth 15 and three wanted to monitor it; 29 out of the 37 did not say anything about tooth number 15 and she assumed that they had overlooked the problem. One dentist quoted $2 833 for two crowns. In total, 16 out of 28 teeth were singled out for treatment at some stage. The best of all was one Adelaide dentist recommending 14 fillings at a cost of $2 228. When asked about this, the South Australian State President of the Australian Dental Association said that he was not surprised by the inconsistencies. He also said, 'What these findings indicate is a dynamic profession that expresses diverse views.' One might wonder what he means by the term' dynamic profession'. In the light of that, my questions to the Minister are:

1. Does the Minister agree with the ADA's statement?

2. What can be done to ensure that a more standard regime of diagnosis and treatment is used in dental treatment?

3. Does this sort of the activity and range tend to undermine the financial integrity of private medical benefit schemes, public confidence and trust in dental treatment and claims for dental treatment from medical benefits by dental practitioners and their patients?

The Hon. DIANA LAIDLAW: I will refer the honourable member's question to the Minister and bring back a reply.

MULTICULTURAL AND ETHNIC AFFAIRS OFFICE

The Hon. P. NOCELLA: I seek leave to make a personal explanation.

Members interjecting:

The PRESIDENT: Order!

Leave granted.

The Hon. P. NOCELLA: I refer to the comments, allegations and accusations that have been levelled at me by the Minister for Education and Children's Services regarding these lamentable episodes that we had to bring up.

The Hon. R.I. LUCAS: I rise on a point of order, Sir. If the honourable member wishes to make a personal explanation he must indicate where he claims to have been misrepresented and then the matter on which he claims to have been misrepresented.

The PRESIDENT: Order! The honourable member has a point.

Members interjecting:

The PRESIDENT: Order! I do not need help from others. I suggest that the Hon. Mr Nocello contain his remarks to the matter in question.

The Hon. P. NOCELLA: Thank you, Mr President, I will. I refer to the fact that I have been somehow accused of misrepresenting other people and to facts which have happened and which are now public knowledge. I would simply refer the Minister for Education and Children's Services to the *Hansard* of 17 June. There, he can see that the documents which had been referred to and which are at the heart of this matter—that is, the briefing notes prepared by the Office of Multicultural and Ethnic Affairs containing political assessments of community organisations—were, according to the Premier (who originally denied their existence), in fact prepared, as I said all along, by the Office of Multicultural and Ethnic Affairs on 17 March. This is the plain truth, after many contortions, denials and denunciations. Under questioning in the Estimates Committee the Premier stated that the document is authentic and that it was prepared by the Office of Multicultural and Ethnic Affairs. The document is authentic—

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! The Hon. Mr Legh Davis will come to order.

The Hon. P. NOCELLA: I will quote from the exact page of the Estimates Committee so that everybody knows.

The Hon. R.I. LUCAS: I rise on a point of order, Sir.

The Hon. R.R. Roberts interjecting:

The Hon. R.I. LUCAS: The Hon. Mr Roberts referred to me as a 'girl' and used sexist language like that because I happened to take a point of order and in a pejorative way referred to me as a girl: I think the Hon. Mr Roberts ought to behave himself.

The Hon. Diana Laidlaw interjecting:

The Hon. R.I. LUCAS: Yes, Lea Stevens might like to hear that language. Standing Order 173 provides that by the indulgence of the Council a member may explain matters of a personal nature, although there be no question before the Council, but such matters may not be debated. If Mr Nocello wants to use the prerogative of that Standing Order, it must be a personal matter, not a regurgitation of the debate about documents in another Chamber. It should be of a personal nature, and he should not be debating it. I seek your ruling on this issue, Mr President.

The PRESIDENT: There are two parts to the honourable member's point of order.

The Hon. R.R. Roberts interjecting:

The PRESIDENT: Order! The Hon. Ron Roberts will come to order.

The Hon. Diana Laidlaw interjecting:

The PRESIDENT: Order! The Minister for Transport will come to order.

Members interjecting:

The PRESIDENT: Order! There were two questions in that point of order. As to the first part, I did not hear the Hon. Ron Roberts say it and I have asked him to act properly in the Parliament. As for the second part of the point of order, I think the honourable member is endeavouring to put a personal explanation, and therefore I rule that there is no point of order.

The Hon. P. NOCELLA: Thank you, Mr President. Having stated the validity of the document, its origin and the date when it was prepared, I will now refer to this communication to which the Minister has referred, and that is my communication to Mr Gardini. This is a fax that I sent on 5 June, simply saying, 'I thought you might be interested in the answers to these questions'—and these are the questions.

The Hon. A.J. Redford: What are the answers?

The Hon. P. NOCELLA: I could not have the answers: these are the questions that I posed in this Chamber.

An honourable member interjecting:

The Hon. P. NOCELLA: No; contrary to what other people do, this clearly states that it is an extract from *Hansard* of 4 June. When I send part of a document I say so, contrary to what other people in this Chamber do. So, unless the Minister for Education and Children's Services does not understand the meaning of 'extract', I think it is pretty obvious to everybody.

LIQUOR LICENSING BILL

In Committee.

Clauses 1 and 2 passed.

Clause 3.

The Hon. R.D. LAWSON: At line 30 I see that included in the Bill as one of the objects of the Act is the encouragement of a competitive market for the supply of liquor, and I think that that is a commendable objective. As I remember, it was not recommended in the objects proposed by Mr Anderson QC, and I think it is a laudable object.

The Hon. Anne Levy interjecting:

The Hon. R.D. LAWSON: However, I wonder what there is in this Bill that encourages a competitive market for the supply of liquor. Regrettably, many of the provisions here are not terribly competitive. Could the Attorney enlighten me on what aspects of the Bill encourage a competitive market?

The Hon. K.T. GRIFFIN: When the Government looked at the Bill we had not only to look at what Mr Anderson QC had recommended. Members will note that we did not accept all of his recommendations, that we made others which were not recommended by him and that we modified others—and that came out of the consultation process. In terms of the competitive framework of this legislation, we were very mindful of the Hilmer report, as the Hon. Anne Levy interjected, and the very strong movement at Federal level and across the jurisdictions to put in place competition principles. Whilst any form of licensing might be regarded as being anti-competitive, we have taken the view that in the context of this Bill there is more competition under this Bill than there is under the present Act, particularly in relation to the needs test which with respect to some areas of licensing has been either removed or moderated. There are changes to trading hours. For example, retail liquor merchants have extended trading hours, which give the hotels more competition, and we have freed up the clubs area.

If you analyse it in terms of the changes which have been made from the present Act I do not think you could fail to see that this provides a more competitive framework. As I say, some may argue that any licence is anti-competitive. We have taken the view that in the context of the competition principles the sort of framework we have in this legislation protects and supports the public interest while at the same time freeing up the market significantly on what is in the present Act.

Clause passed.

Clause 4.

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

Page 3, lines 1 to 4—Leave out definition of 'extended trade' and insert—

'extended trade' in liquor means the sale of liquor—

(a) between midnight and 5 a.m. on any day; or

(b) between 8 a.m. and 11 a.m., or 8 p.m. and midnight, on a Sunday; or

(c) between midnight and 2 a.m. on Christmas Day;

(but does not include the sale of liquor to a lodger or to a diner with or ancillary to a meal);.

This amendment has been made to allow for the granting of an extended trading authorisation by the licensing authority, if satisfied that the criteria in clause 44(2) have been met, to allow for the sale of liquor on Sunday morning from 8 a.m. until 11 a.m. and between midnight and 2 a.m. on Christmas Day. The Australian Hotels Association has argued that retail liquor merchants may trade on Sunday morning and that the existing conditions for a hotel licence in the Bill are inequitable in so far as a hotel cannot sell liquor on Sunday mornings. Hotels, restaurants, clubs and residential licensees can of course sell liquor on a Sunday morning to a lodger, diner or person attending a reception. There are currently 113 hotels which hold general facility licences, of which 36 can trade 24 hours a day seven days a week and a further 53 can trade on Sunday mornings before 11 a.m. without meals. There are also 170 retail liquor merchants throughout the State which will be able to trade on Sunday between 8 a.m. and 9 p.m. Further, this provision should reduce the incidence of the holders of hotel licences applying for special circumstances licences on the ground of special need to trade on Sunday mornings.

The Government recognises that there is an inequity here and has agreed to address this matter by amending the extended trading authorisation provision to allow the holder of a hotel licence to apply for an extended trading authorisation to cover this period. Further, in the second reading of the Bill I indicated that the matter of extended trade into the early hours of Christmas Day would be the subject of further consultation during the recess. This has occurred and the Government has agreed that members of the community see the extra few hours until 2 a.m. on Christmas Day as an extension of Christmas Eve celebrations. Accordingly, it will be possible, again subject to the licensing authority being satisfied of the criteria, for a licensed premises to trade until 2 a.m. on Christmas Day.

It is important to understand that it is not an automatic right. It is a matter which has to be the subject of application and which is within the discretion of the licensing authority, taking into account all the various factors including the potential for undue offence or annoyance to those who might be residing within the vicinity of the establishment for which the extended authorisation has been requested.

The Hon. ANNE LEVY: I support this amendment.

Amendment carried.

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

Page 4, after line 5—Insert:

or

(c) a performance of a kind declared by regulation to be live entertainment.

As members would be aware, live entertainment can cover a number of disparate activities. This amendment has been made to ensure that there is flexibility in this area. Live entertainment is often the source of complaint from the community for reasons of noise or offensiveness. Clause 43 permits the licensing authority to impose conditions to prevent offensive behaviour on licensed premises by persons providing entertainment on licensed premises. This amendment is to ensure that live entertainment which does not fall within the definitions in paragraphs (a) and (b) will be able to be caught by regulation.

The Hon. ANNE LEVY: I have a slight problem with regard to this amendment, which seeks to widen the definition of what is live entertainment to include 'a performance of a kind declared by regulation to be live entertainment'. Is the Attorney-General suggesting that, by regulation, something could be classed as live entertainment which has no live person performing? This is a worry to the South Australian Music Industry Association (SAMIA), which fears that, with the passing of this legislation, there will be a great reduction in job opportunities for its members and that live entertainment using South Australian artists will be replaced by canned entertainment or some sort of virtual entertainment, which is the current jargon, which can be just as noisy but which does not have the advantage of employing live South Australians.

Can the Attorney comment on this matter and say whether there has been any consultation on this question of the reduction of live entertainment between himself and the Minister for the Arts, who I know is a strong supporter of SAMIA and the job opportunities that it provides for emerging and established South Australian artists?

The Hon. K.T. GRIFFIN: I am as concerned as anybody to ensure that this does not go over the top. It is certainly not directed at those sorts of performances to which the honourable member referred. There is an argument that nude performance might not actually fall within the definition of live entertainment.

The Hon. Anne Levy: They are live, aren't they?

The Hon. K.T. GRIFFIN: They are live, but the question is whether it is entertainment, and some adult presentations may not fall within that category.

The Hon. Anne Levy: Presumably it entertains someone.

The Hon. K.T. GRIFFIN: It might do, but this amendment endeavours to deal with those sorts of activities over which there may be some question as to whether it is live entertainment and whether it is a performance. We might say in common parlance that it is, but—

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: My information is that it is a grey area and it is designed to deal with that. It is certainly not designed to cast the net so widely as to catch the sort of performances to which the honourable member referred. The safeguard is that, if a regulation were passed which sought to cover something which was beyond what might be a reasonable scope of the regulation, it could always be disallowed. I do not like regulations as such at all—

The Hon. Anne Levy: That is no good because you can put the regulation on again the next day.

The Hon. K.T. GRIFFIN: I know and I am just saying that. I do not like regulations in that sense particularly much, but sometimes we have to accept that it is impossible to define every variation which might ultimately be the subject of particular offence. In the context of this definition, it may be appropriate for the licensing authority to impose a particular condition regulating that particular activity.

The Hon. R.D. LAWSON: Can the Attorney-General outline any type of live entertainment in addition to the nude performance that he just mentioned that he envisaged might be caught by regulations to be made under this clause? Can he also inform me what is the effect of live entertainment under this legislation? I am aware that clause 35 makes provision for an entertainment venue licence, which refers to live entertainment, and there is also a power in the licensing authority to impose conditions which are designed to prevent offensive behaviour on licensed premises, including offensive behaviour by persons providing or purporting to provide entertainment, and I note that the Attorney-General proposes to include the words 'whether live or not'. Are there any other provisions?

Division 5 of Part 6 deals with the subject of entertainment generally on premises, but I do not understand that to have any specific relationship to live entertainment. It seems to me that the nature of the problem is not the fact that it is entertainment. The nature of the problem that might arise in consequence of live entertainment is that there might be a noise or other forms of nuisance that might inure to neighbouring premises. Why is it that we need to have limitations on the provision of live entertainment in licensed premises?

The Hon. K.T. GRIFFIN: I come back to the point that I was making earlier. Some licensed proprietors have topless pool players or topless bar staff, and the argument in that sense is that it is not entertainment or live entertainment.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: It might not be, too.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: We are not talking about the award. I indicated earlier that the whole essence of this is to give power to the licensing authority to impose conditions which will deal with that sort of unacceptable behaviour. In the context in which the Hon. Robert Lawson refers to this, it is important not only to deal with that sort of behaviour in the liquor industry—and only a handful of people are involved in it—but also to address the issues of the suitability of the premises, the likelihood of noise and, if there is adult entertainment, whether it should be in the front bar where the passing parade of pedestrians can see it and it is visible from the street. A whole range of issues are relevant to the description of 'entertainment' and, more particularly, 'live entertainment'.

The Hon. A.J. REDFORD: I follow up a point that the Hon. Robert Lawson started to develop. On my reading of the Bill (and I stand to be corrected if I am wrong), the only reference I can find to the term 'live entertainment' is in clause 35, which refers to the entertainment being licensed, and it authorises the licensee to sell liquor at a particular time when live entertainment is provided. If I am correct in that assertion—

The Hon. K.T. Griffin interjecting:

The Hon. A.J. REDFORD: The only reference I can find that pertains to the definition 'live entertainment' is in clause 35. If I am wrong, I stand to be corrected.

The Hon. R.D. Lawson interjecting:

The Hon. A.J. REDFORD: The Hon. Robert Lawson refers to clause 43, but I think he is referring to the amendment 'whether live or not'. Apart from the proposed amendment, that is the only place I can find it. It seems to me that if we extend the definition of 'live entertainment'—and this is what the amendment does—we give the executive arm of Government the power to authorise someone who might hold an entertainment venue licence to provide entertainment that might not be, in a colloquial sense, live entertainment by regulating and asserting that, whilst it is not live entertainment, for the purposes of this provision it is live entertainment.

It seems to me that, provided a certain regulation is passed, the net effect of this amendment would be to allow entertainment venue licences to provide entertainment which, on a normal consideration, might not be categorised as live entertainment—and if that is the case the point made by the Hon. Anne Levy does have some force. For example, a discotheque might provide canned music with no live person present and a regulation could be promulgated which provides that canned music or a jukebox is live entertainment for the purposes of the regulation. That would enable people who hold entertainment venue licences to provide liquor and hold such a licence notwithstanding the fact that no live person is present.

The Hon. Anne Levy interjecting:

The Hon. A.J. REDFORD: Yes. If I am correct in that assertion, there is a risk that the statement made by the Hon. Anne Levy is correct, and if that is the case I am not sure why the Government is proceeding down this line. My reasoning might be wrong and I would be grateful if the Attorney could correct it. However, if I am correct I must say that I have some reservations about enabling the executive arm of

Government to make regulations which would enable those who hold entertainment venue licences to avoid providing live entertainment through that means.

The Hon. K.T. GRIFFIN: The premises have to be approved by the licensing authority, and there is always a right of appeal. It is not just the executive arm of Government.

The Hon. A.J. Redford interjecting:

The Hon. K.T. GRIFFIN: No; the fact of the matter is that the premises have to be approved for the purposes for which the licence is granted, and where there is an entertainment venue licence not only do those premises have to be approved for that purpose but also the hours for the sale of liquor are for longer into the early hours of the morning than they are for other premises. In the context of an entertainment venue licence, the impact on the local community is a specially important factor. What the Liquor Licensing Commissioner does, and what is presented to the court if there is an objection and it cannot be resolved, is assess the structure of the premises for their suitability and determine if there is an appropriate safeguard against undue noise escaping into the broader community.

In terms of live entertainment, I acknowledge that it might be possible by regulation to describe a performance where there is not live entertainment, but that is not the objective of the part. It may be that there is some other clever drafting that one can develop to amend the definition of 'live entertainment', but it will be very broad because we are seeking to address the sorts of issues which we describe as adult entertainment but which, if one argues strenuously and technically, one might say is not a performance. I have indicated nude persons in the licensed establishment, topless pool players, topless bar persons and a range of those sorts of things.

Members ought to know that in this industry there are always people who are prepared to extend the limit of the law and the legitimacy of what they are doing. What the Parliament agreed in amendments it passed last year or the year before is that that sort of behaviour ought to be strictly regulated, particularly because of the availability of alcohol.

If members want to come up with an alternative, I am prepared to consider it. The fact of the matter is that on the advice which I have received the definition of 'live entertainment' at the moment, in the context to which I have referred, may not be adequate to cover the sorts of activities to which I have referred—topless bar persons, topless pool players and adult performances.

The Hon. ANNE LEVY: Will the Attorney agree to consult with the Minister for the Arts regarding the concerns that are being expressed by SAMIA, doubtless to her as well as to many other people, and to see whether, as a result of those consultations, a different definition should be considered?

The Hon. K.T. GRIFFIN: There have not been consultations in regard to this regulation but I have indicated previously that there have been consultations with SAMIA (the South Australian Music Industry Association), and the Liquor Licensing Commissioner has offered only recently again to have regular monthly consultations with them. I understand that they have agreed to take that up. The Minister for the Arts was involved in those discussions with me, the Hon. Mr Redford, SAMIA and the Liquor Licensing Commissioner. So, there is that open level of communication which is designed to try to deal with some of the issues.

The other area where this might be relevant is that for an entertainment venue licence it authorises the licensee to sell liquor for consumption on the premises between 9 p.m. on one day and 5 a.m. on the next, being a time when live entertainment is provided on the licensed premises. On New Year's Eve there was a function where one of the television studio's facilities were used to make a live presentation which was beamed by the Internet to London and other countries, as well as to local hotels. The fact is that the entertainment venue licence would not allow that to occur and, under the definition, because a live person is not presenting that entertainment in the entertainment venue, there is a very real question about whether or not that performance can be presented in the entertainment venue. If you provide a broader—

The Hon. Anne Levy: Depending on what you put in your regulations.

The Hon. K.T. GRIFFIN: It does depend on what is in the regulations, I agree.

The Hon. Anne Levy: You could put in the regulations that that counted as live entertainment.

The Hon. K.T. GRIFFIN: That's right; you can. And, if you put that in there, it can be both a positive and a negative. We are seeking to provide more flexibility. Who knows what other technology will become available? But, as the legislation is presently framed, the Internet presentation would not have been live entertainment, so the entertainment venue would not have been able to present it. Provided that the regulation—

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: They were. They were in one of the Adelaide television studios; that is what I am saying.

The Hon. Anne Levy: Yes, but the hotel would have had to employ others. There is no shortage of artists here.

The Hon. K.T. GRIFFIN: I do not think we can win, Mr Chairman. We are trying to ensure that a variety of circumstances can be recognised and, in those circumstances to which the honourable member refers, it does not look as though we will be able to win. The fact is that if a facility wants to present an Internet technology in this way as its entertainment, why should it not be allowed to do so? We might say, 'Don't allow it,' and that will force them into having live entertainment, that is, real people presenting. The fact is that we do not know that that will occur.

The Hon. A.J. REDFORD: I am trying to understand the effect of this amendment because, on my reading of it, it has nothing to do with issues of undue noise or anything like that, as that is well covered in other provisions of the Bill. This seeks to extend the sorts of conditions that might be available to an entertainment venue licence. For argument's sake, the Attorney mentioned such issues as nude persons. If nude persons are involved in a dance, one would think that they come within the definition of 'live entertainment'. Without trying to pre-empt what a court might decide, one would think that a nude barperson would not be providing live entertainment within the existing definition.

It seems to me that all this is doing, provided that regulations are brought into effect, is extending the right of entertainment venue licences to provide different sorts of entertainment. Apart from the Internet-type situation at a local TV studio, one could also imagine regulations being passed whereby canned music was provided: the sort of stuff we hear that is made overseas, the money goes overseas and we are constantly bombarded by it through SAFM. I put that in contrast to the sort of material we get from Triple J. What

I am concerned about is that there are very few things in this Bill for the local live music industry, and I would hate to see them further watered down.

The Hon. K.T. Griffin: They are not being watered down.

The Hon. A.J. REDFORD: But that is what this does.

The Hon. K.T. Griffin: No, it doesn't.

The Hon. Anne Levy: It could.

The Hon. A.J. REDFORD: It does. If you look at the provision as it stands, you will see that it says a dance or other similar event—that is one—or a performance at which the performers, or at least some of them, are present in person. That would cover all live entertainment as I would currently imagine it, but you could pass regulations with significant investment—and we all know the sorts of pressure that executive arm of Government can be placed under with significant investments and Opposition Leaders crying wolf every time there is a blip in the unemployment figures. That could easily be used to pass a regulation that would enable entertainment venue licences to provide boxing matches via satellite TV, and things of that nature.

From my understanding, that was never the intent of what we wanted in relation to entertainment venue licences. I certainly have not been apprised of that to any extent, and that might well be my own fault. However, that concerns me a great deal.

The Hon. R.D. LAWSON: On the point that the Hon. Mr Redford raises, I am very sympathetic to what the Attorney is endeavouring to achieve here, but to lump the nude working-type arrangements in with the live entertainment field is really confusing two separate issues. In his example of the use of the Internet, etc., to provide live entertainment he gave the example of an Adelaide TV studio being used and broadcast out to licensed venues, but the fact that the studio is in Adelaide is nothing to the point. It could be in Sydney; it could be boxing; or it could be an ear biting competition from the United States. The whole way in which the entertainment scene is going it is very likely to be from some other place. That would not be encompassed within the existing definition, but that seems to be entertainment.

On the other hand, the Attorney is talking about nude workers—topless barmaids and the like. I have every sympathy with including provisions that enable the appropriate authority to stipulate working conditions or the like which prevent offensive behaviour, but it seems to me that to lump that type of activity with entertainment is really to confuse two issues.

The Hon. Anne Levy interjecting:

The Hon. R.D. LAWSON: One, as the Hon. Anne Levy says, is working conditions. The other relates to entertainment. It seems to me that we want to do all we can to encourage the provision of live entertainment.

The Hon. K.T. GRIFFIN: In terms of topless bar persons, topless pool players, that can be dealt with in two ways. First, in an entertainment venue there may be something of that nature which will not fall within the definition of live entertainment, or it may be some adult behaviour which some people might regard as either a performance or an entertainment but which might be argued not to be. It was that emphasis which we were seeking to give in relation to an entertainment venue licence to deal with an entertainment venue, but also the Internet issue, a form of entertainment which is not covered by the definition of live entertainment and it may be that, as I said, the regulation could be a positive. It could say, 'You cannot have that sort of entertainment but you must have live.' There are a whole range of possibilities.

In terms of clause 43, to which the Hon. Anne Levy has been referring in the context of topless bar persons and so on, it is included in clause 43 because it is believed to be the only effective way of dealing with that issue. It is not always dealt with in the industrial context by an award. There are contracts, and a whole range of things.

The Hon. Anne Levy: That is why clause 119 is important.

The Hon. K.T. GRIFFIN: We will get to that later. I am just putting it into that context. In terms of an entertainment venue licence where there are different hours for which liquor is available, extended trading is achievable and you have the mix of alcohol and so-called entertainment, the concern that has been put to me—and it is a reasonable concern—is that the definition of live entertainment might not be adequate to address the issues to which I have referred. There may be others as well either in a positive or negative sense. I wish to persist with the amendment. I am prepared to have another look at it in the light of the discussion to see if there is a better way of describing it, but personally I would think that, unless we did it in this way, we would end up potentially with technical argument where people are seeking to push the boundaries out to take technical points on the definition. I am happy to have a look at it before it passes through the Legislative Council, but at the moment all I can see us achieving is to do it by way of regulation.

Amendment carried.

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

Page 4, after line 8—Insert—

'manager' of licensed premises includes a person approved by the licensing authority to supervise and manage the business conducted under the licence.

This amendment is to allow for a responsible person to be approved by the licensing authority to supervise and manage the business conducted under the licence. Certain licensed premises, for example, a very small rural winery, cannot afford the industrial ramifications of having a manager so-called on the premises. The Government has agreed to this amendment to allow a responsible person to be approved to avoid the cost consequences of having a manager in attendance on the licensed premises.

The Hon. ANNE LEVY: While not opposing the amendment, it raises a concern with me that the licensee, say, of a city hotel, may appoint 25 people as managers. It is obviously understandable that the licensee may not always be present given the hours of many licensed premises, but instead of having one or two people as managers who can deputise for the licensee in managing the premises and taking the responsibility which is assigned to managers, a licensee could appoint, as I say, 25 people as managers and, in that way, be abusing the provisions of the Act in terms of the responsibility which goes with being a manager. Also there is the question of the pay scales which may or may not go with being a manager. The question of having a manager instead of the licensee present could be abused by appointing a very large number of managers and the licensee (himself or herself) hardly ever being present.

The Hon. K.T. GRIFFIN: There is only one manager. If the institution or the licensed premises trades for 24 hours a day, it will not be physically possible for the manager to be present all the time. What this Bill does is to require a manager to be present at all times and it is quite likely that there will be several managers who have to accept the

statutory responsibilities imposed upon them by the Act. We have taken the view that that is preferable to a situation where you have one manager who is not always there. We are saying you have to have a manager or, in this instance, a person who might be approved by the licensing authority—remembering that that person has to be approved—on the premises at all times. The Government thinks that this is an advantage, but it can have the consequences to which the honourable member refers.

The Hon. ANNE LEVY: Will the Minister state whether the Liquor Licensing Commissioner would expect to approve a large number of possible managers, or whether he would feel it desirable not to approve a large number of possible managers for a particular licensed premise, so that the abuse to which I have referred could not occur, even though they might be eminently suitable people? I am not questioning their qualifications.

The Hon. K.T. GRIFFIN: It depends very much on the size of the institution. If an establishment is trading seven days a week, 24 hours a day then, quite obviously, if one even thinks about working 40 hours a week, one might end up with half a dozen persons appointed as managers, but they must meet some standards and able to handle the responsibility imposed upon them. For a small restaurant—

The Hon. Anne Levy: An establishment might need six but it will not need 25.

The Hon. K.T. GRIFFIN: I do not think the Liquor Licensing Commissioner would reach the point of appointing 25 managers. It is more likely to be a number that is necessary to cover a full span of trading operations, whereas a small restaurant, for example, might have only one manager. I do not think anyone should fear that this will be used for some sort of sinister purpose.

The Hon. Anne Levy: I don't know. The Minister said himself that they will push the boundaries.

The Hon. K.T. GRIFFIN: They will push the boundaries, but ultimately it is a matter which is subject to the approval of the licensing authority. If it is being abused we will just have to stamp down on it, but the practice of the licensing authorities, both the Commissioner and the court, has been to act in a constrained manner rather than in a generous manner.

Amendment carried.

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

Page 4, line 21—Leave out paragraph (c) and insert—
(c) a public conveyance;.

This amendment is technical and amends paragraph (c) to read 'public conveyance'. That term is also defined and includes 'vehicle'.

Amendment carried.

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

Page 5, line 24—Leave out paragraph (f) and insert—
(f) premises of a kind declared by regulation to be regulated premises,.

This amendment is technical and merely changes the word 'classified' to 'declared'.

Amendment carried.

The Hon. M.J. ELLIOTT: In relation to the definition of wine, I note that this Bill adds to the old Act in that it adds the words 'but does not include a product produced by blending wine with other beverages'. For what purpose have those words been added?

The Hon. K.T. GRIFFIN: Basically, it deals with the new style cooler drinks, that is, mixtures of fruit juice and alcoholic beverage. It does not mean that the product is not covered by the Licensing Act; it still is. It simply means that they cannot be sold at cellar door exempt from duty.

The Hon. M.J. Elliott: It means that cellar door sales will be affected?

The Hon. K.T. GRIFFIN: Yes, that is my understanding.

The Hon. ANNE LEVY: Does it not also affect the franchise fees? If a product is not classed as wine, then it is not in any way taken into account for franchise fees.

The Hon. K.T. Griffin: The liquor licensing fees?

The Hon. ANNE LEVY: Yes. Would it not be relevant in that respect?

The Hon. K.T. GRIFFIN: If a product was defined as wine but had an alcohol content of less than 6.8 per cent it would then be low alcohol wine and no licensing fee would be payable. Because it is excluded from the definition of wine, it therefore is covered by the other categories of low alcohol drinks where the limit is 3.8 per cent. So that it would in fact be dealt with under the liquor licensing fee regime as low alcohol liquor and would pay the fees appropriate to that rather than no fee if it was defined as wine.

The Hon. Anne Levy: If it was above 3.8 per cent?

The Hon. K.T. GRIFFIN: That is right. A product is dutiable if it is between the 3.8 per cent for low alcohol liquor and 6.8 per cent for low alcohol wine. Does that help the honourable member?

The Hon. Anne Levy: This could improve the Treasury figures?

The Hon. K.T. GRIFFIN: Yes.

The Hon. ANNE LEVY: I am all in favour.

The Hon. M.J. ELLIOTT: I take it then that, with creative blending and other ways, any blended drink will be blended so that it is below 6.8 per cent?

The Hon. K.T. GRIFFIN: It does not matter whether it is over 6.8 per cent, because it covers anything over 3.8 per cent. It is really seeking to deal with a significant development in the industry and the marketplace, where blended drinks are now much more readily available than when the Act was last reviewed.

Clause as amended passed.

Clause 5 passed.

Clause 6.

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

Page 7, after line 11—Insert new subclause—
(2) However—
(a) a minor who is a shareholder in a proprietary company, or a beneficiary under a trust, is not for that reason to be regarded as a person occupying a position of authority; and
(b) a charitable institution that is a beneficiary of a trust is not, for that reason, to be regarded as occupying a position of authority in the trust.

This amendment is proposed as a result of concerns raised in the Liquor Licensing Working Group that a minor or a charitable organisation should not necessarily be regarded as occupying a position of authority in a trust or corporate entity.

Amendment carried; clause as amended passed.

Clause 7.

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

Page 7, line 14—Leave out 'of child' and insert 'or child'.

This amendment corrects a typographical error.

Amendment carried; clause as amended passed.

Clause 8 passed.

Clause 9.

The Hon. ANNE LEVY: The current Act states that the inspectors and other officers necessary to assist the Commissioner are part of the Public Service or are employed under the GME Act applying at the time. There is no equivalent in this legislation, but is it expected that the Commissioner's staff would consist of people who are not members of the Public Service? In other words, could inspectors be contracted out and not be members of the Public Service, even though they are required to assist the Commissioner in the administration and enforcement of the Act?

The Hon. K.T. GRIFFIN: There is no intention to outsource the inspection service at liquor licensing. The Commissioner would expect that, certainly in the foreseeable future, they will all be employed under the Public Sector Management Act, but there may be occasions where, for example, a person from the University of Adelaide is engaged on a project which might require that person to be appointed as an inspector to give them the necessary power to enter licensed premises. There is a range of possibilities in the Aboriginal community. It may be that a non-Public Service person is appointed with inspectorial powers, because the Liquor Licensing Commission is working with Aboriginal communities, particularly on the Pitjantjatjara Maralinga lands to try to deal with the problems which those communities have identified with alcohol and alcohol abuse. We took the view that, to enable that flexibility to be available, this is the way it ought to be framed.

Clause passed.

Clause 10 passed.

Clause 11.

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

Alter section heading to 'Disclosure of information'.

This is amendment inserts a section heading which more accurately reflects the substance of the provision.

Amendment carried.

The Hon. ANNE LEVY: I wish to ask the Minister a question regarding clause 11(c). A new measure, which does not occur in the existing Act, provides that the Commissioner has power to disclose information to any other person as the Commissioner in the exercise of an absolute discretion considers appropriate and in the public interest. I appreciate that occasions may arise when the Commissioner needs to disclose information, but this seems to be a bit sweeping. The Commissioner could go off his rocker and decide it was in the public interest to disclose the most personal, private and sensitive information about someone. It would be absolutely at his discretion to do so, and no-one could say or do anything about it. I do not wish to cast aspersions on the Commissioner in any way, but commissioners do come and go. I wonder whether the Commissioner's being given such a sweeping power to disclose any information to anyone at all at any time he feels so inclined is a bit too sweeping and an invasion of privacy.

The Hon. K.T. GRIFFIN: My understanding is that that is a direct result of an advice from the Crown Solicitor, particularly in relation to material that might be of a statistical nature with respect to the administration of the Act. I cannot recollect the opinion, but I am informed that it relates to making available statistical information or information of a general nature relating to the administration of the Act to persons outside the description of a public authority or an authority discharging duties of a public nature. It is really intended to deal with those situations where Crown Solicitor's advice says, 'Look, you presently do not have authority to do it.'

The Hon. ANNE LEVY: I appreciate the point made by the Attorney and I would certainly support statistical information being made available for legitimate purposes, but I wonder whether the Attorney does not agree that the clause as phrased goes far beyond statistical information. It could, as I say, be personal and private information which the Commissioner could release to absolutely anyone at any time in his absolute discretion in a way that I feel most of us would not approve of.

The Hon. K.T. GRIFFIN: I am happy to give a commitment to look at that before it finally passes the Parliament, but there may be a way in which we can deal adequately with the issues raised. If there is other information of which I am not presently aware that might suggest it needs to be as wide as this I will let the honourable member know.

Amendment carried; clause as amended passed.

Clauses 12 to 16 passed.

Clause 17.

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

Page 10, lines 14 to 17—Leave out subclause (2).

The amendment is necessary as a matter of drafting. The provision is covered by clause 22(3) and therefore in clause 17 it is superfluous.

The Hon. ANNE LEVY: Do I take it that removing subclause (2) does not remove the right of appeal?

The Hon. K.T. GRIFFIN: No, clause 22(3) provides that an application for review of a decision of the Commissioner must be made within one month after the party receives notice of the decision.

The Hon. ANNE LEVY: It does not matter whether it was a contested or an uncontested application?

The Hon. K.T. GRIFFIN: No. If you look at clause 22(1), you will see that a party to proceedings before the Commissioner who is dissatisfied with a decision may apply to the court for review. Clause 17(2) deals with a contested application. It is my view that clause 22 adequately deals with the rights of review.

The Hon. R.D. LAWSON: Can the Attorney indicate the reasoning behind conferring upon the Commissioner the exclusive jurisdiction, as I see it, to determine all contested applications for a limited licence? These limited licences arouse a strange creature, but one imagines something such as last year's Jimmy Barnes concert would be the type of special event which would warrant the grant of a limited licence. One can imagine that events of that kind could be quite large events with substantial economic, financial and other ramifications. With respect to a contested application for such an event, I would have thought the proponents ought have the capacity to have that application dealt with by the court.

One of the difficulties is that very often these things have to be done in a short time frame. Obviously, it can sometimes be difficult to get the court to sit. Given the fact that the Commissioner has powers in relation to the conciliation of the matter and that the Commissioner might well, for reasons which it appears to the Commissioner are reasonable, take a negative view of an application, in effect by the general processes it might be that the applicant's right to appeal against a refusal of a limited licence is lost by effluxion of time. If the proponent considers that it is likely there will be a number of objections to the sort of Jimmy Barnes situation from last year, the applicant might want to take his case

immediately to the court and have the matter resolved rather than go through the Commissioner and then have to appeal against it. Has the Attorney given consideration to giving to an applicant for a limited licence the option of applying directly to the court and, if he has, why was that avenue denied to an applicant?

The Hon. K.T. GRIFFIN: The rationale for splitting the responsibilities between the Commissioner and the court is basically this: the fewer matters you have in the court the less likelihood you will be bound up in legal debate with teams of lawyers fighting over a particular matter. The court seems to encourage rather than reduce litigation. We took the policy decision that the more matters we can have dealt with administratively the better that would be for the whole Liquor Licensing Commission as well as the State, the parties and so on. Limited licences are not generally big ticket items. They are frequently made at short notice, for example, four or five days' notice. If the court is not scheduled to sit, it means that the applicant has to wait, and if it is to be contested then all the paraphernalia of the court will be involved.

If you also provide for limited licences that are contested to go to the court, the right of appeal is to the Supreme Court. We took the view that because these matters were of a relatively minor nature, although some funds are involved, it was better to do them even on a contested basis before the Commissioner with a right of review by the Liquor Licensing Court than the alternative of going to the court and then appealing to the Supreme Court. The whole rationale is relative administrative ease, lower cost and much greater prospect that the matters will be resolved earlier rather than later.

The Hon. A.J. REDFORD: I have received a letter from Peter Hoban, who I know has corresponded with the Attorney on the Bill. He has taken some trouble to write to me and other members. Whilst I do not agree with what he says, I ought to put his opinion to the Attorney-General so that the Attorney can respond. In part of his executive summary regarding the Bill in relation to the role of the Commissioner *vis-as-vis* the court, he stated the following:

> The Bill proposes that the Liquor Licensing Commissioner, a non-judicial person, will have the power and authority to grant, for example, hotel licences, etc. . . .I think all of these developments are unhealthy and will result in a poorer licensing system.

Later in the document he goes on to say:

> In my view it is wrong for the Commissioner to have the power to deal with non-contested matters of all kinds because presumably this includes potentially troublesome licences like the hotel bottle shop entertainment venue and special circumstances licences. These licence types can have massive negative impacts on the community if, for example, they are granted at inappropriate locations or perhaps given too generous trading rights. No disrespect to the present Commissioner, but in my view it is a job for a judicial person rather than an administrative function. Similarly I think the court should hear contested applications for limited licence, for example, the Jimmy Barnes type drama. . . .In my view it is highly appropriate and desirable for the Commissioner to deal with the administrative functions of the licensing authority (inspect premises, collect fees, etc.) as distinct from performing judicial and quasi-judicial functions.

Whilst I appreciate Peter Hoban's genuine approach, it seems to me that administrative officers give out licences and deal with significant matters on a day-to-day basis in all sorts of areas. To have a judge deal with what a lot of other public servants deal with in other areas is probably out of step with the rest of the regime in which the executive arm of Government operates.

If we are to have an efficient, competitive system of licensing in this area, the executive arm of Government, through the Commissioner, ought to have the power to do these things, and there are very generous provisions as to review. To do my duty to my constituent, I have put that on the record to allow the Attorney-General to comment.

The Hon. K.T. GRIFFIN: Mr Hoban has been a correspondent in relation to the Bill, and we have appreciated receiving representations from him and from many other people. However, in relation to limited licences, we have made a policy decision that they can be dealt with administratively and that we want to limit the extent to which access is had to the court.

The fact that the Licensing Court has been a feature of the licensing landscape for so long has really meant that people have come to live with it and accept it as the best way of dealing with a lot of licensing applications. I do not think we ought merely to accept it because we have done it for so long. We ought to ask why we do it and what is the rationale for doing it.

I have a view that, as with a number of other sorts of occupational-type licences, there is no reason why they should go to the court. Obviously, if there is dissatisfaction with a decision of an administrative nature, there ought to be a right for review, as there is with other areas of occupational licensing. That keeps the system honest. In policy terms, there is no reason why we should insist upon matters being dealt with by the court rather than by the Liquor Licensing Commissioner.

In terms of limited licences, in my view there can be no justification for even contested applications being dealt with by the Liquor Licensing Commissioner. In terms of other matters, if the parties agree that the matter should go to the Licensing Court, from which there is an appeal to the Supreme Court, they will ordinarily go in that direction, and that is the way in which it will be handled. The Commissioner makes very significant decisions in relation to gaming machine licences. Liquor licences are not much different, if there is any difference, in terms of the impact. Whilst Mr Hoban has a particular point of view, I do not subscribe to it.

The Hon. A.J. REDFORD: It has been my experience that sittings of the Licensing Court vary from time to time. At one time His Honour Judge Kelly sat only once a month, and in a commercial environment it is not appropriate to leave initial applications to a judge. I understand that he now sits twice a month. There are many occasions where people want a limited licence for a small function or some other small exercise, and to have that application go to a judge is quite ridiculous.

The work that judges have done over the last couple of years has been diminished quite significantly because of previous changes to the Act and, as a member of Parliament, I have not had any complaint, other than the odd individual decision. Indeed, I have complained about the odd individual decision, and I appeared before the Commissioner. I appealed and I was beaten. It is appropriate and it is in conformity with modern management standards within the public sector. The decisions are transparent. Everyone knows what is going to happen and how it is dealt with.

I can say from personal experience that it is much cheaper to go before the Commissioner in a rather relaxed environment in his room with a table where the discussion tends to continue on a very informal basis than in the more formal environment of a court. From a client's perspective, going

back the three or four years since I have appeared in that jurisdiction, it is far preferable.

The Hon. ANNE LEVY: I totally agree with the comments made by the Attorney-General that it is desirable for the Commissioner to handle matters such as are set out in the Bill. However, I point out to those who raised the question of the Jimmy Barnes concert last year, that as I understand it under clause 21(c) if the Commissioner felt that a matter of particular public interest was involved he could refer it to the court, anyway, for determination. I imagine that this would cover the type of situation to which the Hon. Mr Lawson referred.

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

The Hon. T. CROTHERS: I am sure that the Attorney-General and his advisers have thought about this, but there is more to the Liquor Licensing Bill than just the issuing of liquor licences. I understand that there is a Gaming Commissioner, and it will not be very long before a number of wowsers in the community who understand that gaming machines are usually located in areas that are licensed to sell liquor will seek redress by using the instrumentality of appeal against the issuance of licences by trying to prevent gaming machines from being located in a particular area. The impact of that could be very wide ranging. Some pretty smart people in the community understand that that is one way of belling a cat. I do not know whether or not that issue has been addressed in sufficient depth.

I understand that it is a different jurisdiction and that it is the Licensing Commissioner who makes that determination, but one could piggyback into that area in the Liquor Licensing Court if one were to endeavour to use that as an argument. I think that the Attorney-General and his advisers have to be very careful with respect to coming to a complete understanding that the Liquor Licensing Act of today, because of gaming machines, is not the Liquor Licensing Act of four or five years ago with respect to matters that we have been used to dealing with through either the Liquor Licensing Commissioner, a judge of the court (I think Judge Kelly was mentioned by my colleague, the Hon. Robert Redford) and others of that ilk. I think you have to be very careful and have a mindset which recognises that: you need to have one eye on the moving ball as well as on the fixed ball in the Bill. I make that observation because it is germane to this clause and other clauses in the Bill which give the Licensing Court the right to either remove or deny the issuance of a licence.

The Hon. R.D. LAWSON: I, too, as I imagine have a number of other members, have received a couple of communications from Peter Hoban, who is a very experienced practitioner in the licensing field. I must say that I do not agree with Mr Hoban's contention that all non-contested matters should not be dealt with by the Commissioner. I do not agree where he says it is wrong for the Commissioner to have power to deal with those matters; in fact, I agree with the Bill in this respect.

However, I think that non-contested matters are entirely different from contested matters. If parties view matters seriously enough to want to contest them, they ought to be resolved by a tribunal which is set up to deal with contested matters, to hear and sieve evidence and determine them. However, the Attorney has said that he has taken a certain view in relation to limited licences, and I do not propose to take the matter any further.

When the Attorney said that in drafting the Bill every effort was taken to limit access to the court because the court carries with it the panoply of lawyers and disputation and great expense, I think it is undoubtedly true that in the licensing field over many years there has been a good deal of legal disputation. But that is because the very function of the Liquor Licensing Act is to confer certain rights upon those who manage to obtain a licence: they are rights in the nature of monopoly rights. Those rights traditionally have been very difficult to obtain and are worth defending, and in those circumstances it is entirely appropriate that persons should have the best legal assistance they can to defend their interests or to pursue applications, and very often applications have been pursued against very hot opposition from incumbent licensees.

Whilst we have this system which does protect in a certain way a form of monopoly or Government licence, I think it is only appropriate that those seeking to hold on to those licences and to prevent others from getting them on legitimate grounds should have the opportunity of full legal assistance to pursue their rights as they are quite entitled to do in any other field of commercial activity. I did not understand that the Attorney was saying anything against that proposition, but I was a little concerned when he spoke of a part of the philosophy being to limit access to the court.

The Hon. K.T. GRIFFIN: The access is limited at first instance and there are more than adequate rights of review and appeal. That is the essence of it—ultimately whether a citizen has a right to have a dispute independently reviewed—and that is a facility which is provided in this Bill. I acknowledge what the Hon. Mr Crothers says, namely, that there is an interrelationship between liquor licensing and gaming machines that was not there five years ago, but I think, among other things, that that has helped us to appreciate the need to free up the processes rather than retaining unnecessarily bureaucratic processes. Also, it has enabled us to allow the Liquor Licensing Commissioner, as the licensing authority, to undertake more functions than he does at present.

Amendment carried; clause as amended passed.

Clause 18.

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

Page 10, lines 22 and 23—Leave out paragraph (b) and insert—
(b) is not bound by the rules of evidence but may inform himself or herself on any matter as the Commissioner thinks fit.

This amendment aligns the wording of this provision with a similar provision in clause 23(b).

Amendment carried; clause as amended passed.

Clauses 19 to 31 passed.

Clause 32.

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

Page 16, line 14—After 'between 11 a.m. and 8 p.m.' insert 'or if the Sunday is New Year's Eve, between 11 a.m. and midnight'.

This amendment corrects an oversight in the drafting of the conditions for trade on Sunday for a hotel licence.

Amendment carried.

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

Page 16—
Line 19—After 'paragraph (a)' insert 'or (b)'.
Line 22—After 'to sell liquor' insert 'at any time'.
Line 24—After 'to sell liquor' insert 'at any time'.

These amendments are tidying-up exercises: the first to adequately state the hours of trade for the holder of a hotel licence on New Year's Day; the second to make it clear that liquor may be sold at any time to a diner in a dining room with/or ancillary to a meal provided by the licensee; and the third is in similar terms to that amendment in relation to the sale of liquor in a designated reception area.

Amendments carried.

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

Page 16, lines 26 to 28—Leave out paragraph (h) and insert:

(h) if an extended trading authorisation is in force—

(i) to sell liquor for consumption on the licensed premises in accordance with the authorisation; and

(ii) subject to any conditions of the authorisation excluding or limiting the authority conferred by this subparagraph—to sell liquor on a Sunday (not being Christmas Day) for consumption off the licensed premises between 8 a.m. and 11 a.m. and between 8 p.m. and 9 p.m.

This amendment allows the holder of a hotel licence to trade under an extended trading authorisation which authorises the sale of liquor for consumption on licensed premises in accordance with the authorisation. However, the extended trading authorisation has been expanded to provide for the sale of liquor on a Sunday for consumption off licensed premises between 8 a.m. and 11 a.m. and 8 p.m. and 9 p.m.

In effect, the holder of a hotel licence with a full extended trading authorisation will be able to sell liquor on a Sunday for consumption on the licensed premises between 8 a.m. and midnight and for consumption off the licensed premises between 8 a.m. and 9 p.m. Hotels and bottle shops will, under this amendment, have identical trading rights on a Sunday for the sale of liquor for consumption off the licensed premises.

Amendment carried; clause as amended passed.

Clause 33.

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

Page 17—

Lines 23 to 27—Leave out paragraph (b) and insert—

(b) if the conditions of the licence so provide—authorises the licensee to sell liquor on any day except Good Friday and Christmas Day for consumption on the licensed premises by persons—

(i) seated at a table; or

(ii)attending a function at which food is provided, (but extended trading in liquor is not authorised under this paragraph unless an extended trading authorisation is in force).

Lines 28 and 29—Leave out subclause (2).

Page 18, lines 1 and 2—Leave out paragraph (c).

The latter two amendments are consequential upon the first, which is to reword the extended trading authorisation to bring it into line with the same provision applying to a hotel licence.

Amendments carried; clause as amended passed.

Clause 34.

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

Page 18—

Line 16—After 'the licensed premises' insert 'at any time'.

Lines 20 to 24—Leave out paragraph (c) and insert—

(c) if the conditions of the licence so provide—authorises the licensee to sell liquor on any day except Good Friday and Christmas Day for consumption on the licensed premises by persons—

(i)seated at a table; or

(ii)attending a function at which food is provided, (but extended trading in liquor is not authorised under this paragraph unless an extended trading authorisation is in force).

Lines 25 and 26—Leave out subclauses (2).

The first amendment inserts the same provision for restaurant licence as for residential licence; the second is to reword the extended trading authorisation to bring it into line with the same provisions applying to other categories of licence; and the third is consequential on that amendment.

Amendments carried.

The Hon. ANNE LEVY: This clause contains no mention whatsoever of the BYO category licence as used to apply. I take it from this that any restaurant can be a BYO once this legislation becomes law but a restaurant would have the authority to refuse BYO; is that correct? If we look at clause 34(1)(a) and (b), the combination means that any restaurant can be BYO but that a restaurant can refuse to be a BYO.

The Hon. K.T. GRIFFIN: That is correct. Any restaurant can be a BYO restaurant; any restaurant can refuse to be a BYO restaurant.

Clause as amended passed.

Clause 35.

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

Page 18, lines 34 to 36—Leave out paragraph (b) and insert—

(b) to sell liquor on the licensed premises for consumption on the licensed premises at a time when live entertainment is provided on the licensed premises between 9 pm on one day and 5 am on the next but not at any time falling between—

(i) 9 pm on Christmas Day and 5 am on the following day;

(ii) 9 pm on Maundy Thursday and 5 am on Good Friday;

(iii) 9 pm on Good Friday and 5 am on Easter Saturday.

This amendment corrects an anomaly in the Bill that provides that an entertainment venue licence authorises trade between 9 p.m. and 5 a.m. the following day by right, but then restricts trade between midnight and 5 a.m. without an extended trading authorisation. The effect of this would have been to allow general trade between 9 p.m. and midnight only. Dealing with the second amendment that I have on file, it is consequential on that first amendment and makes the entertainment venue licence subject to the same conditions needed to be satisfied by all other licence categories to gain an extended trading authorisation. The holder of an entertainment venue licence is able to trade from 9 p.m. to 5 a.m. and it is appropriate that the licensee be required to meet the same criteria as applies to an extended trading authorisation.

The Hon. ANNE LEVY: I move:

Page 18—New paragraph (b) proposed by the Attorney General—Leave out from subparagraph (iii) 'Easter Saturday' and insert 'the following day'.

This is the first time in the legislation that the words 'Easter Saturday' occur, which are not defined in clause 4. I have had raised with me that there are people who have theological objections to the term 'Easter Saturday'. They say that, strictly, the correct theological term is 'Holy Saturday' and that Easter Saturday is a different day. I noted that clause 32(1)(h) talks about selling liquor for consumption on the licensed premises in accordance with the authorisation on any day except the day after Good Friday or the day after Christmas Day. It seems to me that the day after Good Friday is the day that the Attorney's amendment is calling 'Easter Day', and 'Boxing Day' has disappeared from the Liquor Licensing Act and is everywhere replaced by the expression 'the day after Christmas day'.

It seems to me that we could satisfy those who have such theological objections without in any way invalidating the intention of the Bill if we replace 'Easter Saturday' with, in this case, 'the following day' or 'the day after Good Friday' in the same way as 'Boxing Day' has been replaced by 'the day after Christmas Day'. I find it odd that with my theological beliefs I am moving this amendment, but I see no reason to offend people quite unnecessarily in legislation when simple rewording can remove the offence and still have the same meaning.

The Hon. K.T. GRIFFIN: I am not going to get involved in a theological debate but merely point out that under section 32 of the existing Act among others there is a reference in subsection (2)(d) to 9 p.m. on Good Friday and 5 a.m. on Easter Saturday.

The Hon. Anne Levy: Not in your revised one: that is the existing Act.

The Hon. K.T. GRIFFIN: No, but I merely point out that it is in the existing Act. I do not make a big point about it: I am prepared to go along with the honourable member's amendment.

The Hon. Anne Levy's amendment carried; the Hon. K.T. Griffin's amendment as amended carried.

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

Page 19, lines 1 to 10—Leave out subclauses (2) and (3) and insert—

(2) An entertainment venue licence must be subject to the following conditions:

(a) a condition that the business conducted at the licensed premises must consist primarily and predominantly of the provision of live entertainment; and

(b) a condition requiring the licensee to implement appropriate policies and practices to guard against the harmful and hazardous use of liquor; and

(c) any conditions the licensing authority considers appropriate to prevent undue offence, annoyance, disturbance, noise or inconvenience; and

(d) any other conditions the licensing authority considers appropriate in view of the nature and extent of the trade authorised under the licence.

I have already explained this.

Amendment carried: clause as amended passed.

Clause 36.

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

Page 19—

Line 16—After 'between 11 am and 8 pm' insert 'or if the Sunday is New Year's Eve, between 11 am and midnight'.

Line 21—After 'paragraph (a)' insert 'or (b)'.

Line 24—After 'to sell liquor' insert 'at any time'.

I move these three amendments together. This simply brings the trading conditions on a Sunday for a club licence into line with a hotel licence. The second amendment is the same as that made to clause 32 and brings a club licence into line with a hotel licence. The third is the same as those made in respect of a hotel licence for a designated dining room and a designated function room.

Amendments carried.

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

Page 19, line 26—After 'to sell liquor' insert 'at any time'.

Amendment carried; clause as amended passed.

Clauses 37 to 39 passed.

Clause 40.

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

Page 21, line 35—After 'to sell liquor' insert 'for consumption on or off the licensed premises'.

This amendment clarifies that a special circumstance licence enables the sale of liquor on or off the licensed premises.

Amendment carried; clause as amended passed.

Clause 41.

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

Page 22, line 25—Leave out 'the licence' and insert 'a permanent licence'.

This amendment corrects an anomaly in the Bill by making it clear that a limited licence should not be granted where, in the opinion of the licensing authority, it would be better authorised by a condition on an existing permanent licence. The existing wording referred to a condition on the limited licence.

Amendment carried; clause as amended passed.

Clause 42.

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

Page 22, line 30—Leave out 'prevent' insert 'minimise'.

This amendment will bring the provision into line with the wording in the objects of the Bill. It is essentially a drafting and tidying up exercise.

Amendment carried.

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

Page 22, line 35—After 'sealed containers' insert 'or containers of a kind approved by the licensing authority'.

This amendment allows the licensing authority some flexibility to approve certain containers for the sale of liquor for consumption off licensed premises. It is common practice for people to purchase bulk fortified wine in open containers. However, there have been instances of this being abused in some remote communities where bulk fortified wine has been sold in unacceptable containers such as opened coke cans and buckets. This amendment will give the licensing authority discretion to allow a genuine commonly accepted practice while restricting unacceptable practices.

The Hon. A.J. REDFORD: I do not have any problem with the provision at all. Where it provides 'of containers of a kind approved by the licensing authority', how does the Attorney-General see the approval being given? Will it be done by regulation, by proclamation or by notice? Will the Commissioner, say, on special events have the power to approve different sorts of containers? For example, one might imagine on a specific occasion he might approve open containers being used such as when one is in a small motel—and it has often happened to me—where there is no bottle opener in the room, in those circumstances he might approve that the top be taken off.

The Hon. K.T. GRIFFIN: With the example given by the Hon. Angus Redford, I do not think there is a problem. If you have a bottle of wine in your room and you have not got—

The Hon. A.J. Redford: I accept that. How will the approval be given?

The Hon. K.T. GRIFFIN: The approval is to be done by a condition attached to the licence by the licensing authority. What this is really directed towards is remote communities of the State. I was in one of them not so long ago where there was real criticism of the licensee selling in buckets and eskies—a whole range of receptacles—-bulk wine to Aboriginal people who queued up at the door. I find that an unacceptable practice. It certainly caused a great deal of concern in that community, but there were some limits on the power of the Liquor Licensing Commissioner under the present Act to deal adequately with it. This amendment will ensure that the Liquor Licensing Authority has adequate power to impose conditions, but it will be done on a case by case basis.

The Hon. T. CROTHERS: I support the Attorney but I would like to inject a piece of rationale of which he is probably aware. I well recall a very important test case that was taken in the licensing commission at the time of the discount wars, where one of the discounters—and I will not name him but his Christian name was Brian—had an estoppel put on him by a licensing court in respect of what he was doing because he was virtually destroying the industry. He then appealed to the Supreme Court and he got off on the basis that the bottles of beer that had been seized by the

Licensing Court inspectorate had not been shown to contain beer. The Attorney may well remember the case; it is a very famous case. One of the effects of this amendment will be to ensure that something of that ilk will be very difficult to repeat because what it does is weaken the power of the Licensing Court. In respect of the control of licences to dispense liquor, as I pointed out wider vistas are now opened up. It is essential for that court to have all the power that it needs in respect of matters that are not in the public interest, but moreover it is important for us to give it that power, that is, draft it and craft it in such a fashion as it almost puts the matter beyond appeal because of the nature of the drafting of the Act under which the commission and the Licensing Court judge operate. I support the Attorney.

Amendment carried.

The Hon. ANNE LEVY: Clause 42 speaks about a code of practice which will be promulgated by means of the regulations. This code of practice has very laudable aims of preventing the harmful and hazardous use of liquor and promoting responsible attitudes regarding promotion, sales, supply and consumption of liquor. Will the Attorney give any information concerning what is likely to be in these regulations or what the code of practice is likely to provide to achieve these laudable aims? Who is drawing up this code of practice and will all parties—or stakeholders is the favourite phrase—be able to contribute to drawing up the code of practice?

The Hon. K.T. GRIFFIN: I have given a commitment to all those who are on the working group that there will be full consultation in relation to both the development of the regulations and codes of practice. But one thing that comes to mind immediately is a code of practice that deals with things such as happy hours, with shooters, that is the provision of shooters in test tubes—

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: No, I do not use slang in here if I can avoid it—and all the beer you can drink for $10. That sort of practice promotes irresponsible service of alcohol and does not minimise harm: it accentuates it. They are the sorts of issues that are likely to be covered in a code of practice but there may be others. Putting it into this form is a useful provision, particularly because most codes of practice have to be developed in consultation with any industry group and, in those circumstances, in relation to the liquor industry, they will then own the code of practice and be much more supportive of it rather than its being imposed. Consultation is the order of the day to try to deal with issues which we may not be able to deal with specifically in the legislation but which fall within the broader range of harmful practices.

The Hon. ANNE LEVY: I appreciate the Attorney's comments very much. The working group did not, for a variety of reasons, include the union that covers all employees in this industry. Can the union be included in consultations regarding the code of practice?

The Hon. K.T. GRIFFIN: I give that assurance.

The Hon. T. Crothers: Two unions are involved.

The Hon. K.T. GRIFFIN: I give the assurance in relation to both unions.

The Hon. T. CROTHERS: The Federated Liquor Trades Union and the Federated Miscellaneous Workers Union and the shop assistants have some interest in that matter. I want to put on the record that I knew a fellow (a Lutheran) who lived close to the Hackney Hotel. As I recall, he had played cricket for South Australia some years ago. He was very wont to take issue with the Hackney Hotel over this sort of noise. That place employed some 45 people and there is no doubt that noise was emanating from the hotel and the fellow was despairing. We visited one Saturday night and the noise from the hotel was substantial. We said, 'You must tone that down' and it did. A situation such as that might occur where the union, acting as the responsible corporate citizen peer group that it is, might wish to intervene on behalf of people employed. I am very glad the Attorney has given that assurance on record, because I understand that, to my chagrin, the working group did not include the unions. I guess and I hope that that was simply an oversight on behalf of the Attorney and not due to what I would call a question of being bound up in respect to movement one way or the other.

The Hon. Anne Levy: Or being bloody-minded.

The Hon. T. CROTHERS: No, being bound up through ideology; but I would not think so, knowing the Attorney. I am prepared to give him the extreme benefit of the doubt, knowing that he is a fairly decent fellow and does not tell many lies—he does not tell any lies, in fact, because he is a Methodist, or Uniting Church. I simply put that on the record, Attorney, in case some ideologue comes to you and says, 'Why did you do that?' Apart from the principle that you have embraced, where is the rationale that underpins why you should in fact give that guarantee?

The Hon. K.T. GRIFFIN: I have already indicated that I give the assurance that, in the context of the regulations and in the context of the codes of practice, there will be wide consultation which will include those who are representatives of employees, whether they are unions or any other persons. The fact is that, in terms of the implementation of this legislation and the assessment of a person who might be intoxicated, employees will carry the primary responsibility and will themselves be exposed to a liability potentially if they do not administer the law effectively. I have no difficulty with that, and no-one else in Government will have a difficulty with that. I would see that as an essential ingredient of the implementation.

Clause as amended passed.

Clause 43.

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

Page 23, line 17—After 'entertainment' insert '(whether live or not)'.

This amendment allows the licensing authority increased flexibility in the area of imposing conditions on entertainment whether live or not.

Amendment carried; clause as amended passed.

Clause 44.

The Hon. ANNE LEVY: I move:

Page 24, line 17—Leave out paragraph (b) and insert:
(b) the day after Good Friday;.

This amendment is another instance of replacing 'Easter Saturday' with 'the day after Good Friday', which means the same thing and which apparently is less offensive.

The Hon. K.T. GRIFFIN: I accept the amendment.

Amendment carried.

The Hon. ANNE LEVY: I note that the current Act has special conditions which apply west of 133° of longitude, and that this has been removed in the current legislation so that there will now be no difference right across the State. I am certainly not opposed to that and I am not sure why it was there in the first place.

The Hon. T. Crothers interjecting:

The Hon. ANNE LEVY: Yes, I wondered whether it had anything to do with Aboriginal lands. In the current Act it is

section 54d, which has been rearranged to be clause 44 or 43 in this Bill. Would the Attorney care to comment as to why this has been removed?

The Hon. K.T. GRIFFIN: There is a lot more flexibility in relation to hours under the Bill.

The Hon. ANNE LEVY: I am not exactly sure where 133° of longitude is, but if it relates particularly to Aboriginal lands did consultation occur with the Aboriginal communities involved as to the effects of this removal?

The Hon. T. CROTHERS: The only other thing it might refer to, on reflection, are the roadhouses on the Nullarbor and the passing trade from buses and coaches. It would relate either to that or to some of the Aboriginal lands.

The Hon. K.T. GRIFFIN: I can say that no consultation occurred with Aboriginal communities but consultation did occur with the Aboriginal alcohol council—the correct name of the relevant body escapes me at the moment. However, I am told that this provision is more to do with the roadhouses; but, of course, under this Bill there is a lot more flexibility in terms of hours, and so my understanding is that it was therefore not necessary to make a special provision for either that longitude or any other.

Clause as amended passed.

Clauses 45 to 47 passed.

Clause 48.

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

Page 25, lines 11 to 15—Leave out subclause (2) and insert:

(2) If a person holds a wholesale liquor merchant's licence, that person or a close associate of that person must not simultaneously hold any of the following licences:

(a) a hotel licence; or

(b) a retail liquor merchant's liquor; or

(c) a special circumstances licence,

unless the licensing authority is satisfied that the conditions of the respective licences are such as to prevent arrangements or practices calculated to reduce licence fees.

This amendment is to correct a typographical error. The Bill is amended to read 'wholesale liquor merchant's licence'. The amendment also inserts an important provision which is in the current Act allowing the licensing authority to approve the holding of these licences simultaneously if satisfied that there are no arrangements or practices calculated to reduce licence fees.

The Hon. A.J. REDFORD: What sort of arrangements or practices might reduce licence fees where the owner of any of those three hotel, retail liquor merchant's or special circumstances licences might reduce the fees?

The Hon. K.T. GRIFFIN: This is a provision in the current Act, I am told, but it could also be where a wholesaler and a retailer agree that the prices will be varied to gain a distinct advantage in relation to the licence fee that is calculated.

The Hon. A.J. REDFORD: Does that mean that different fee rates are paid for different licences?

The Hon. K.T. GRIFFIN: This is one scenario. Hotels pay the liquor licence fee on the purchase price. A related wholesaler might suggest selling it to you at a grossly discounted price, and in those circumstances there would be a fraud on the revenue.

The Hon. A.J. REDFORD: That can happen when they are at arm's length, too, can it not?

The Hon. K.T. GRIFFIN: It can happen, but there is a financial incentive in business. If you are at arm's length and you decide that you want to sell at a competitive price lower than some other wholesaler you are entitled to do it but, where you are not at arm's length and there is an arrangement to sell it for half price, you are defrauding the revenue.

The Hon. T. CROTHERS: I support what the Minister is doing. There is another very substantial reason why that provision ought to be in the Bill. A number of people in the State have a brewer's licence, not just the operative brewers—what used to be SAB and Coopers. I understand that there are a few others; for instance, the Lion Brewing and Malting Company has a brewer's licence. It could be held in law that they are wholesale liquor merchants, because that is what they do: they wholesale liquor, even though they have a separate licence. I could envisage legal arguments being mounted. It is therefore clearly necessary to separate one from another. A question then arises. If someone holding a hotel licence, a retail liquor merchant's licence or a special circumstances licence impinged sufficiently badly on the Licensing Act to have the Licensing Court take away their licence, the question then arises whether they then lose their wholesale liquor licence as well, if they were allowed to hold one. I can see a massive amount of legal argument coming into play there.

Additionally, certain people have been known to ship beer or wines across the border, bring them back surreptitiously and flog them at a higher mark-up, using the system to avoid paying a higher tax. There are a number of reasons to support the Attorney-General on this matter. The Act has contained such a provision before, with very good reason. I can see a number of anomalous situations. We must ensure that the Liquor Licensing Act is so crafted that it means what it says and leaves as little room as possible to require the Government or some elements of the industry to pursue litigation. I support the Attorney with respect to that matter. There well may be other grounds for this provision than those I have proffered. I do not know whether I am right in what I believe to be the case, but these are logical reasons for supporting the Minister on these provisions.

The Hon. A.J. REDFORD: I do not understand the Attorney's last two answers; perhaps I do not understand how the licensing system operates. I am not sure why it is needed at all. I do not know what is meant by the term 'an arrangement or practice calculated to reduce licence fees'. If it is paid on the value of liquor sold, or on what is paid for the liquor, and if I get cheaper liquor from a wholesaler, one might argue that I am acquiring liquor on the basis of a practice calculated to reduce the licence fee. I know that this measure was not intended to cover that. I do not see why we need it, when one looks at clause 80 of the Bill. First, retail, wholesale and producer licences are all taxed at the same rate; it is not as though there were any differential rate.

Secondly, if I understand the Attorney's previous answers correctly, even if some sort of scheme were going on, the exceptions and qualifications in clause 80 provide that, if in the Commissioner's opinion the gross amount paid or payable for liquor is less than the reasonable wholesale or retail value, the licence fee is to be based on the Commissioner's assessment of the reasonable wholesale or retail value (whatever that might mean). If we have those protections in the Bill, why do we need a provision that restricts ownership in terms of a licence? If we were trying to reduce the amount of regulation and trying to allow maximum flexibility in the delivery of liquor to consumers, I would have thought that the provisions in clause 80 were sufficient. I might well be wrong, but it has not yet been explained to me how holding those three licences together can cause problems for the revenue.

The Hon. T. CROTHERS: There is nothing to prevent someone from holding all those licences. The definitions define people who are closely related. While I am on my feet, I also want to raise the matter of subclause (2)—

The Hon. A.J. REDFORD: Sir, I have asked the Attorney a question. Could I please have the respect of this Chamber so that, when I have asked a question, the Minister can answer it? The honourable member can then take his line of questioning. This makes it difficult for me and as a member of Parliament I think I am entitled to understand—and I do not understand.

The Hon. K.T. GRIFFIN: There is a need to have this provision as an anti-avoidance measure, because a wholesale liquor merchant pays only 11 per cent of the gross amount paid or payable to the licensee for liquor by purchasers who are not liquor merchants during the relevant assessment period. So, a wholesale liquor merchant will sell to a hotel, which is related, and the hotel will pay the licence fee (11 per cent) on the purchase price from the liquor merchant. If the liquor merchant is related, they sell it at cost, which might be $20. If there is profit built into the price it might be $25. If it were an arm's-length transaction the wholesale liquor merchant would sell to the hotel for $25, in which case the licence fee would be 11 per cent on $25, but if the wholesale liquor merchant sells to a hotel at cost without the profit margin built into it then it is 11 per cent on $20.

The Hon. Anne Levy: He might sell at a loss.

The Hon. K.T. GRIFFIN: He could sell at a loss, too. I was giving an example of a person who is not selling at a loss, but there is potential there to manipulate the system.

The Hon. A.J. REDFORD: Why is the exception and qualification in clause 80(1) not sufficient to cover the position? In other words, why put this restriction on ownership when the Commissioner has the capacity to deal with it through the use of clause 80(1)?

The Hon. K.T. GRIFFIN: The rationale for it is that you have in place the framework right from the start to prevent the holding of two licences which might lead to that manipulation. The exception No. 1 in clause 80 is giving the Commissioner power to act after the event, and there is that surveillance, but you can never be sure that you are catching everyone who is evading the fee. It is really a question of double protection.

The Hon. T. CROTHERS: I said that there could be argument over the way in which the clause is drafted. If you look at subclause (2)—and those of us who are used to dealing with the Act will know that that means the holder of a wholesale liquor merchant licence—you will note that we have left out the word 'licence'. In this respect it could be argued that someone who currently holds a brewer's licence is also a wholesale liquor merchant. If we inserted the word 'licensee' after 'merchant' it would be very clear that it was a specific type of licence.

The Hon. K.T. GRIFFIN: That is what is corrected in the amendment.

The Hon. R.D. LAWSON: I see that this provision is actually a replication of section 51 of the existing Act and that, once again, this clause provides that in this case the authority must be satisfied that the conditions of the respective licences are such as to prevent arrangements or practices calculated to reduce licence fees. That is a current, existing provision. Can the Attorney advise whether or not there are standard forms of conditions which have been implied by the court in circumstances of this kind? Specifically, is it common for there to be multiple licences, and have conditions of the kind postulated been imposed?

The Hon. K.T. GRIFFIN: There are licensees who hold multiple licences. The practice of the Liquor Licensing Commissioner is to look at the arrangement and documentation. If they are not satisfied with the documentation, the Commissioner may impose a condition, but there is no standard condition which might be imposed. Each one is judged on its own merits, and the Commissioner looks at the practices. There is periodical review of those practices where there are common licensees.

Amendment carried; clause as amended passed.

Clause 49.

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

Page 25, after line 27—Insert subclause as follows:

(1A) However, the licensing authority may grant a club licence to a trustee for an association if satisfied that—

(a) the association is unable to become incorporated; or

(b) it is inappropriate to require the incorporation of the association.

This amendment has been agreed to by the Licensed Clubs Association and will allow the licensing authority to grant a club licence to a trustee for an unincorporated association. Certain associations, for example, the Country Fire Service, are unable to incorporate but wish to obtain a club licence (that is, the individual units) and have been unable to do so on the current provisions of the Act. Other clubs may have valid grounds not to incorporate but, nevertheless, also wish to obtain a club licence. This provision will now allow that to occur subject to the scrutiny of the licensing authority.

The Hon. ANNE LEVY: Will the Attorney confirm that in this case the licence will be granted to an individual who then has the responsibilities which go with having a licence and can have the penalties if licence conditions are breached?

The Hon. K.T. GRIFFIN: My understanding is that it would be granted to the person as the trustee of the association because there is no entity other than all the members to whom it can be issued.

The Hon. T. CROTHERS: If it is granted to the trustee, is that the person who sues or is sued on behalf of that licence?

The Hon. K.T. GRIFFIN: That is correct.

The Hon. T. CROTHERS: Would sufficient regard be given by the court in the issuance of that licence to the taking out of the appropriate insurance, such as public risk? I am mindful of the Country Fire Service, which is a semi-government auxiliary. If someone got injured on licensed premises and that organisation was not covered by public risk insurance, or whichever insurance is appropriate, that person might be able to sue the Government.

The Hon. K.T. GRIFFIN: It is not a function of the licensing authority now to look at public liability insurance cover for any licensee.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: But it still would not be the responsibility of the licensing authority to ensure that the trustee had adequate insurance cover. It is a matter for the person or body which is licensed.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: They are unincorporated and they can be sued. If I were a trustee, I would have a trust deed which would indicate for whom I act.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: As a trustee you accept personal liability. It is as simple as that.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: That is the law in relation to trustees. If you are a trustee, you may get an indemnity from the trust fund or under the trust deed, but that will not necessarily protect you personally from liability.

The Hon. T. CROTHERS: Will the unincorporated association nominate a trustee and will the trustee be the person who will hold the licence?

The Hon. K.T. GRIFFIN: No, the trustee will hold the licence. That does not mean that the licensee is the person who is sued by someone who is owed money by the unincorporated association. It is likely that the person who is owed a debt by the unincorporated association would sue the trustee. It depends how the transaction has been structured. Such a person is more likely to sue every member of the unincorporated association. That is not affected by liquor licensing law.

Amendment carried; clause as amended passed.

Clauses 50 and 51 passed.

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

Clause 52.

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

Page 27, before line 21—Insert subclause as follows:

(A1) This section applies to applications for—

(a) the grant of a licence (other than a temporary or limited licence);

(b) the transfer of a licence;

(c) the removal of a licence;

(d) an extended trading authorisation;

(e) the conversion of a temporary licence into a permanent licence;

(f) a condition authorising sale of liquor under a club licence for consumption off the licensed premises;

(g) consent to use part of the licensed premises or an area adjacent to the licensed premises to provide entertainment.

This provision has been identified in the submissions received in the recess as causing some confusion. It has been redrafted to identify clearly the instances in which notice must be given of an application to the licensing authority. Such notice will require applicants in these circumstances to notify the local council and occupiers of land adjacent to the proposed licensed premises, and to insert a notice in certain newspapers, including a local paper, that advertised the application on the premises to which the application relates. Regulations will specify the dimensions of this notice on the proposed premises, but it is intended that the notice be of much greater dimensions than those which currently prevail in order for it to be clearly visible to all those passing by.

The Hon. M.J. ELLIOTT: I have received submissions on this matter from the Local Government Association, which notes that certain words in the Bill as introduced, namely, 'or a change to the trading conditions of a licence as follows' will be deleted. At least, it is intended that will happen in a subsequent amendment which is consequential on the amendment that the Attorney-General has moved. The submission by the Local Government Association suggests that, if this new subclause is accepted, a further two subclauses should be added to it.

The Hon. Anne Levy: They are included in my amendment.

The Hon. M.J. ELLIOTT: When did the honourable member put that on file?

The Hon. Anne Levy: This afternoon.

The Hon. M.J. ELLIOTT: I am sorry, but that one has not come to my attention. The two measures that the Local Government Association suggests should be included are the varying of trading hours previously fixed by the licensing authority in relation to the licence and the varying or revoking of a condition of the licence. It seems to me that those two additions were covered by the original Bill but they do not appear to be covered any longer. It seems reasonable that, if there is to be a change in trading hours or a change in a licence, there is a real possibility that the local community will be interested in that change and that such an application should be advertised.

The Hon. ANNE LEVY: I move:

Page 27—After paragraph (g) of the proposed new subclause (A1) insert paragraphs as follows:

(h) the variation of trading hours previously fixed in relation to the licence;

(i) the variation or revocation of a condition of the licence.

I support the Attorney's amendment as clarifying the situation but agree with the Hon. Mr Elliott that, as the Bill was originally drafted, it provided that notice must be given for an application of the grant, removal or transfer of a licence or a change to the trading conditions.

The amendment moved by the Attorney (which is to clarify the situation) is to apply to the grant, transfer or removal of a licence, an extended trading authorisation, the conversion of a temporary licence into a permanent licence, a condition authorising sale of liquor under a club licence for consumption off the premises, and consent to use part of the premises or an area adjacent to the premises to provide entertainment. My amendment adds what has vanished in the Attorney's amendment, that is, a variation of the trading hours previously fixed in relation to the licence and a variation or revocation of a condition of the licence.

These are matters in which local people would have an interest and there should be a notice of the application placed so that they can be aware that perhaps the trading hours are proposed to be altered. Obviously this would be of great relevance to people who lived near licensed premises. I agree with the Hon. Mr Elliott and the Local Government Association that these matters should be widely advertised to surrounding communities.

The Hon. K.T. GRIFFIN: I can accept the addition of paragraph (h), which was quite properly drawn to the council's attention and came to our attention as well, so the variation of trading hours is an appropriate matter to add by way of amendment. However, I cannot accept paragraph (i), and the reason is that where conditions are imposed by the Liquor Licensing Commissioner subsequently it is not required that they be advertised and there is no rationale for advertising a variation of conditions because the conditions may be conditions which do not have any impact on the local community. For example, the condition may simply specify arrangements dealing with a licence fee assessment which have no impact on the local community, and it therefore seems unnecessarily burdensome to propose that conditions be included in those matters of which notice must be given.

There is power for the licensing authority in an appropriate case to dispense with or modify the requirements of subclause (1), so a modification might be to modify it in the sense that some additional notice must be given; or it can be caught under paragraph (b): 'may direct that notice be given under this section of other applications to the authority', which can include a change of conditions. I am amenable to accepting paragraph (h) but not paragraph (i), because I think

paragraph (i), if it were to be included, becomes an inflexible requirement which may be appropriate in some cases but not in others.

I suggest that it is more appropriate to leave that issue to the discretion of the licensing authority so that it may be appropriate in some cases to require notice to be given of variations of conditions but not in others, and it can be managed then on an administrative basis. The main issues are picked up by my amendment and paragraph (h), and they are the amendments which are most likely to have a direct impact on the local community.

The Hon. T. CROTHERS: With regard to the Attorney's amendment, ultimately the matter (including paragraph (f)) is for the discretion of the licensing authority, but I know that some clubs already have this facility. Given that clubs were set up in the first instance to service the people who apply for and pay up their membership (and the Bill deals with that in another place) and their guests, what conditions does the Attorney envisage would have to prevail prior to the granting of paragraph (f) as a further condition of the licence, that is, the sale of liquor under a club licence for consumption off the licensed premises?

I ask the Attorney the question and I do not wish him to pre-empt the licensing authority: after all, he is moving the amendment on behalf of the Government he represents. I think it is proper, without wishing to pre-empt the duty of the licensing authority, for me to direct a question to him as to what conditions he would envisage would apply with respect to the issuance of that extra curricula licensing condition about the clubs and consumption off the licensed premises prior to the licensing authority granting that addition to the licence which is before the authority to be renewed and reviewed.

The Hon. K.T. GRIFFIN: Clause 36 (1)(i) deals with a club licence and provides:

> If the licensing authority is satisfied that members of the club cannot, without great inconvenience, obtain supplies of packaged liquor from a source other than the club and includes in the licence a condition authorising the sale of liquor under this paragraph—to sell liquor on any day except Good Friday and Christmas Day to a member of the club for consumption off the licensed premises.

Some clubs presently have an endorsement on their licence which allows for this. This is not intended to deal with those—

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: It is not intended to apply to those that exist: it is intended to deal with those circumstances where there is an application for a condition to be attached. It is an application. If it affects the local communities and because of the need to achieve an appropriate balance in this Bill between the rights of licensees (in whatever form that might take) and local communities—and that deals with trading hours and a whole range of other issues such as entertainment—in my view it is appropriate that this issue also be the subject of proper notification. That way we maintain the balance which I think is a fairly reasonable balance between the various competing interests and the sometimes conflicting interests in relation to the way in which we have dealt with licensing issues under this Bill.

The Hon. T. CROTHERS: Is this what you are therefore saying: it will be very difficult for a club to have its licence varied by the authority if there were other outlets within the reasonable vicinity of the club from which one could purchase packaged liquor for consumption off the premises; it would be unreasonable for the licensing authority to grant the club that extra condition as outlined in clause 52 (A1)(f)?

The Hon. K.T. GRIFFIN: That is the provision in the current Act.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: I do not know what the decision of the licensing authority will be, and no-one can presume it. But in terms of particularly the application, this deals with the notification of the application and it seems to me appropriate that that notification be provided for.

The Hon. A.J. REDFORD: The Attorney's amendment basically provides that certain applications must be advertised for, and in his amendment I draw his attention to subclause (A1)(g) which, in effect, requires consent to use part of the licensed premises or an area adjacent to the licensed premises to provide entertainment and requires that there be an advertisement. I must say that when I was involved in this area of practice of the law the cost of advertisements and applications was not insignificant. The Attorney might recall that in my second reading contribution on 3 June I asked a question in relation to clause 105, the clause that provides some indication (if a hotel or licensed premises is to apply for permission to have entertainment) as to how the Commissioner might apply the clause.

I think it appropriate that I ask that question at this stage. Nothing has happened since 3 June that would indicate any change of mind on my part, but I am concerned that the live music industry will be closed out if there is an unsympathetic application of this Act to the industry. On page 1483 of *Hansard*, I stated:

> It could be argued that every time a hotel or licensed premises wants to put on live or some form of entertainment they have to go back to the licensing authority. That would be of great concern to me because it would impose a significant cost on the proprietors of hotels and the promoters of bands. Can the Liquor Licensing Commissioner explain to me what will be his general policy with regard to the length of time in which these licences will be granted? Is he intending to grant the licences for an indefinite period and make them subject to revocation by some other process in the Bill or will he allow them for limited periods or limited events?

It would be of great concern to me if the answer came back that they have to be done on a case by case basis. It would be of enormous concern to me, because there are premises out there which have been providing live entertainment year after year or which have the facilities to present that live entertainment, and along comes a new neighbourhood and says 'No, we don't want it, because we want to change the nature of our neighbourhood.' It is exactly the same as the airport argument: the airport has been there for much longer than I have been alive. If I go and buy a house near the airport, I should expect a bit of aircraft noise.

I think that the same applies with live entertainment in hotels such as the Arkaba. If I buy a house near the Arkaba I should expect some noise. I might remind members of the comments I made in my second reading contribution, to the effect that I had been told by the proprietor of the Arkaba Hotel that it is not uncommon for him to find people hiding in the bushes with noise meters, with a view to trying to close down that venue. If we are going to look after our young children and treat them as important assets to this community—although our youth unemployment figures do not seem to support that—we need to have some sympathy for their cause.

The Hon. K.T. GRIFFIN: Clause 105 mirrors the existing section 113 of the Act with the exception that the clause now specifies that the licensing authority must be

satisfied that the grant is unlikely to give undue offence to neighbours. The licensing authority has always had regard to this in granting entertainment consents and has imposed conditions on consents to satisfy this requirement. In that sense, nothing will change under this Bill. Entertainment consents are granted in respect of the premises and, unless sought for a finite period, attach to the licence indefinitely. The entertainment consent would be removed only for a disciplinary action or as the result of the determination of a complaint.

If a licensee says, 'We want it for only one occasion,' then it will be granted. Generally speaking, if all the other conditions are satisfied, it will be granted for that activity. But the endorsement attaches to the licence indefinitely in general terms, and I am informed that there is no intention to change that approach.

The Hon. A.J. REDFORD: I will ask some further questions on this, because it also might be pertinent to the sorts of conditions in terms of entertainment. I am not asking for a response now, because I know that the Attorney probably has prepared responses for when we get to clause 105. But it would concern me, if applications have to be advertised, if the Commissioner is giving too narrow a condition and they have to go back all the time to get any changes, considering the cost of this. Other than that, I thank the Attorney for his response and have no difficulty with what he said.

The Hon. ANNE LEVY: I want to clarify a matter that relates to the Attorney's response to my amendment. I gather that he is saying that he does not wish to have inserted (i), the variation or revocation of the condition of the licence, because under (2) the licensing authority can direct, if it deems appropriate, that notice be given of applications and, if it were a condition of a licence being changed that could affect local residents, the Commissioner would take that approach and would require application to be made. I also note that under subclause (2) the licensing authority may in an appropriate case dispense with or modify the requirements of subclause (1).

The Attorney may be aware that the Local Government Association objects to subclause (2)(a) on the basis that it may mean that there are applications which one would expect to be advertised which the Commissioner at his discretion may decide are not going to be advertised. So, there could be cases where local residents would expect to be notified but will not be, because of the application of subclause (2)(a). Will the Attorney comment on this? Depending on his answer, I may be seeking leave of the Council to move my amendment in an amended form.

The Hon. K.T. GRIFFIN: There has to be a certain element of discretion, I suppose. It may be, for example, that under clause 52(1)(b)(ii) there may not be another newspaper circulating in the area in which the licensed premises are or are to be situated. There has to be a discretion to deal with those sorts of issues. The Commissioner, where it is likely to have some impact on local residents, even under present legislation, would require notification.

If the honourable member looks at the whole framework of this legislation, it is directed towards ensuring that local residents have a greater level of say, or at least are given a greater level of notice than they are at the present time. On that basis, it is difficult to see how the Commissioner will not at least have regard to the possible impact upon local communities in relation to an application. All that I can say is that on the basis of the way in which the present law is being administered, where potential impact upon local communities is a relevant consideration and is the subject of action, particularly notification, I cannot see that this clause will change the practice and, if the honourable member looks at the clause, it strengthens the prospect that notification will be given.

The Hon. M.J. ELLIOTT: I understand why the Attorney may not be keen for paragraph (i) to be included. In that a great number of the conditions of the licences may be relatively trivial and perhaps unimportant. I do not know whether that would be true in all cases or whether or not some variations of conditions would be of local interest. I note that section 58(2) of the old Act provided that an application of any other class must, if the licensing authority so requires, be advertised. It appeared to me that it gave the discretion to the Liquor Licensing Commissioner; that is, that he or she may decide that there was an issue relating to conditions of a licence that is of local importance, if you like, and could require it to be advertised. I cannot find anything within this clause which enables that discretion to be exercised. I may be wrong, but I ask the Attorney-General to address that point.

The Hon. K.T. GRIFFIN: What about subclause (2)?

The Hon. M.J. ELLIOTT: I do not think so because, as I understand it, at least, it only applies to the conditions that are already there.

The Hon. K.T. GRIFFIN: No, it applies to applications.

The Hon. M.J. ELLIOTT: Subclause (2) in the Bill?

The Hon. K.T. GRIFFIN: Subclause (2)(b)(i) provides that the licensing authority may direct that notice be given under this section of other applications to the authority. There is a power in the Commissioner to require other applications to be notified. So, I think that covers the honourable member's question.

The Hon. M.J. ELLIOTT: I indicate that I am satisfied: I misread that clause the first time.

The Hon. R.D. LAWSON: I apologise if the Attorney has already covered this—I may have missed his response—but I refer to the Hon. Anne Levy's amendment and the insertion of paragraph (i) concerning the requirement to give notification in respect of a variation or revocation of a condition of the licence. As I read it, the licensing authority has power to impose conditions on an application, and I refer to clause 43(2)(f) which provides:

> if the licensing authority considers the condition necessary for public order or safety—on the Commissioner's own initiative.

Also, the authority may revoke or vary any condition that was already in the licence. Am I not correct in assuming that there may be occasions when, as a matter of administrative action, conditions are varied; for example, in relation to the matter raised earlier this evening about the anti-avoidance provision which enables the authority to impose conditions of the licence to ensure that there is no avoidance of revenue aspects?

One can envisage that the Commissioner might, as a result of matters coming to his attention, want to vary those conditions across the board. Am I right in thinking, therefore, that the effect of the honourable member's amendment would be to require public notification of any such variation or revocation to the public in circumstances where the public really has no interest in the matter?

The Hon. K.T. GRIFFIN: I did address that issue by saying that one example is that a condition may simply specify arrangements dealing with a licence fee assessment, which would have no impact on the local community. But

there are a number of others. It may be that there is a condition that for a particular licence a certain number of security officers be on the premises at particular times. It may be that the need for those has diminished and that the numbers can be reduced. It may be that a condition has to be imposed to require additional numbers. It may be that the venue no longer provides entertainment and there may be conditions attached that relate to the actual conduct of the entertainment. It seems a bit pointless, if it no longer conducts entertainment, that we then have to advertise to remove the conditions that specifically relate to the entertainment.

The imposition of conditions can be, as I said at the outset, by the licensing authority without any consultation with the local community but just as a matter of the licensing authority's own initiative. It seems somewhat incongruous that, their having been put on in that way, the licensing authority cannot take them off or vary them without going through the notification process. In terms of administration and the requirement for flexibility, it seems to me that paragraph (i), which the Hon. Anne Levy wishes to add, is an unnecessary burden that detracts from flexibility and, in most cases, does not serve any public purpose.

The Hon. A.J. REDFORD: I agree with the sentiments expressed by the Attorney, although I understand what the Hon. Anne Levy is attempting to achieve. If I understand the legislation correctly, basically what this is doing is adding a list of the nature of applications that need to be advertised and then, under subclause (2), the licensing authority may in appropriate cases dispense with it. It might well be argued that a licence fee review case is one where the Commissioner could automatically dispense with it. The problem I have is in a case where the Commissioner might say—and I go back to one of my favourite topics—'I will give you an entertainment venue licence and these are the conditions', and then six weeks later you find out that a condition is unworkable.

You know that it will not affect anyone, it is a pretty minor change, and he might exercise his discretion under subclause (2)(a) to dispense with the requirement to advertise and make a decision. I do not have any problem with that. But later there may be some neighbours or some people who become upset about that. I refer the Attorney back to the appeal clause, clause 22, which refers to an application for review of the Commissioner's decision.

I do not have any problem with that, because any problem will be resolved by either the Hon. Anne Levy's amendment or the Attorney's amendment. However, I am concerned that if the Commissioner decides to waive the requirement to advertise and someone subsequently wants to dispute that waiver, then that person may not have a right to appeal because of the effect of clause 22(1), which provides that a party to proceedings before the Commissioner, who is dissatisfied, may appeal. A very narrow class of people can appeal. One can imagine the situation with respect to entertainment: one might make a change to an entertainment venue licence and the neighbours become upset and say, 'That should have been advertised. That is unfair. I want to appeal against the decision.'

But because the neighbours were not directly a party to the initial application, they could not appeal. I am suggesting that the Attorney might want to look at the issue in that context, because I am sure we will get another chance to look at it. I do not think we need paragraph (i) at all but, if we do not have it, we need to consider giving the right to appeal against a Commissioner's decision to a greater range of people than just parties. I am concerned that if a person waives the right to advertise, particularly in a noise situation, then six weeks down the track, when the neighbours get upset, they find that they do not have any remedy. That is what concerns me.

The Hon. K.T. GRIFFIN: We can bog down the whole system by putting in even more bureaucratic obligations by statute that are inflexible, or we can rely upon the practice that has occurred over recent times and also the provisions in the Bill that enable people to make complaints to the licensing authority in relation to undue noise, offensive behaviour and so on. That may not be much comfort in the short term to someone where a condition has been removed which they may be anxious about when they learn about it, but at least it provides a remedy. I would be very much opposed to broadening the appeal rights to include all those sorts of people who may or may not be affected by that sort of decision.

As I have indicated, the intention is to make a judgment about the conditions that are likely to have some public impact or not likely to have public impact. I do not see how you can effectively manage that by some form of drafting that will distinguish between the two without creating even further legal difficulties. As I say, the spirit of the Bill is very much to ensure that those who are adversely affected by activity in licensed premises have some rights. They have wider rights now than they had previously, and I suggest that this provides a good balance. But if you put in a provision to enhance the appeal rights it will create even more bureaucratic involvement, or if you seek to require notification of any variation or revocation of the condition, whatever that may be, you will again burden the whole system to a degree that is not in the public interest.

The Hon. ANNE LEVY: I wish to move my amendment in an amended form, that is, to delete paragraph (i), so that I move:

Page 27—After paragraph (g) of the proposed new subclause (A1) insert paragraph as follows:

(h) the variation of trading hours previously fixed in relation to the licence;

The Hon. K.T. GRIFFIN: I am prepared to accept the amendment.

The Hon. R.D. LAWSON: Paragraph (h) of the Hon. Anne Levy's amended amendment speaks of the 'variation of trading hours previously fixed in relation to the licence'. It seems to me that that should be 'extension of trading hours'.

The Hon. K.T. GRIFFIN: That is already covered in paragraph (d) of my amendment.

The Hon. R.D. LAWSON: Yes, but why a variation, if it is already covered? If licensed premises are to reduce the extent of the hours, for example, to open at noon rather than 10 a.m., why should there be any requirement for a public notification? I can quite understand why those neighbours might be concerned by an extension of trading hours, but I would not have thought that they had any interest in anything other than an extension.

The Hon. ANNE LEVY: Then I suggest that the licensing authority under section 52(2)(a) could dispense with that requirement.

The Hon. K.T. GRIFFIN: I agree, in relation to a reduction in trading hours, but we are looking at two things. First, there is the extended trading authorisation, which applies to Sunday mornings, Sunday nights and so on. But it may be that the extended trading authorisation is varied, and it may be that the extended trading authorisation is for a

particular period of hours at particular times of the day. It may be that those times are to be varied, not necessarily to reduce the hours. I am prepared to accept the amendment, but I also indicate that, in light of the issues that have been raised, it may be that before the matter is finally resolved by the Parliament we will fine tune the amendment.

I understand the point made by the Hon. Robert Lawson: if there is to be a reduction in those hours, why would anyone want to require notification of that; and, on the other hand, if there is a variation to set different hours, then it is probably appropriate to deal with it as a variation. Rather than spend a lot of time debating it, I note the honourable members' points and I undertake, having accepted the amendment at the present time, to give it further consideration before the matter is finally resolved by the Parliament.

The Hon. Anne Levy's amendment as amended carried; the Hon. K.T. Griffin's amendment as amended carried.

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

Page 27, lines 21 and 22—Leave out 'for the grant, removal or transfer of a licence of a change to the trading conditions of a licence' and insert 'to which this section applies'.

Page 28—

Lines 9 and 10—Leave out paragraph (a) and insert—

(a) may, in an appropriate case, dispense with, or modify, a requirement of this section; or.

Line 15—Leave out subclause (3).

These amendments are consequential.

Amendments carried; clause as amended passed.

Clause 53.

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

Page 28, lines 18 to 20—Leave out subclause (1) and insert—

(1) Subject to this Act, the licensing authority has an unqualified discretion to grant or refuse an application under this Act on any ground, or for any reason, the licensing authority considers sufficient (but is not to take into account an economic effect on other licensees in the locality affected by the application).

As a result of concerns expressed by a number of liquor licensing lawyers and industry groups that this provision would result in increased litigation, an amendment has been proposed to provide the licensing authority with a much wider discretion, similar to that contained in the existing Act. It has been argued that the provision as it currently stands would result in all applications being subject to the equivalent of need and demand criteria, because of the need to satisfy the objects, in particular paragraph (b), to further the interests of the liquor industry and industries with which it is closely associated, such as tourism and the hospitality industry, within the context of appropriate regulation and controls; (c), to ensure that the liquor industry develops in a way that is consistent with the needs and aspirations of the community; and (d), to encourage a competitive market for the supply of liquor.

The amendment also explicitly states that the licensing authority is not to take into account the economic effect on other licensees in the locality of granting the application. This last point is in accordance with competition policy principles and was a recommendation made by Mr Tim Anderson QC in his review of the Act.

The Hon. ANNE LEVY: I certainly was surprised to see this amendment, which removes any reference to the aims of the Act. It seems surprising that that was being removed, but I appreciate the Minister's comment that the aims of the Act are very broad and that the discretion of the licensing authority should be unfettered. I am slightly concerned, however, that this makes no reference at all to the aims of the Act. It would seem to me that one could make reference to the aims of the Act but still award the licensing authority an unqualified discretion. Surely, if an unqualified discretion is granted this will not lead to litigation and the four lawyers mentioned by the Hon. Angus Redford will remain unemployed.

The Hon. K.T. GRIFFIN: I understand the point that the honourable member is making, but the advice I have received is that, if specific reference to the objects were made in this clause, which deals with the granting or non-granting of the licence, it would have resulted in untold litigation, with parties arguing about what particular objects mean, whether they are satisfied and so on. We felt it was unnecessarily unwieldy and had the potential for quite extensive litigation such that it would destroy attempts to get more flexibility into the legislation.

The objects still apply. The objects of the Act are an expression of the purpose which is designed to be served by the Act, so they still have a permeating effect across the whole legislation. However, they are not specifically limited to, or picked up by, the criteria for granting a licence, for the very reason that this would create a potential for extensive litigation and we did not want to have to face up to that. But, the knowledge that the objects exist and are a basis for the whole legislation should be enough of a signal to the licensing authority to have regard to those when granting a licence.

The Hon. ANNE LEVY: I am afraid I am not convinced. I should have thought that a reference to the objects of the Act and the statement that the licensing authority has an unqualified discretion would not lead to litigation. It would be reinforcing the objects of the Act but, if it is clearly stated that the licensing authority has an unqualified discretion, I do not see how litigation can result, because I would have thought that the possible actual meanings of the words would become irrelevant if the licensing authority had absolute discretion. One cannot query absolute discretion.

The Hon. K.T. Griffin: The courts do.

The Hon. ANNE LEVY: How can we write a law using words such as 'unqualified discretion' that the courts cannot misinterpret?

The Hon. K.T. GRIFFIN: I was not prepared to undertake that challenge or require it of Parliamentary Counsel without getting ourselves in too deep. I appreciate the argument which the Hon. Anne Levy is making. I have taken comfort from the fact that the objects are intact, that they are the basis for the legislation and that, in the context in which the licensing authority will exercise a discretion, the objects are a relevant consideration. As it stands, the clause provides that applications are to be determined by reference to the objects of the Act and an application is not to be granted unless the licensing authority is satisfied that the grant is consistent with the objects of this Act. If you analyse that—

The Hon. Anne Levy: I am not arguing for that.

The Hon. K.T. GRIFFIN: I know you are not, but the difficulty is to get a marriage of the two, so we finally took the decision that the licensing authority has that absolute discretion as the best way to avoid the bureaucracy.

The Hon. R.D. LAWSON: This amendment raises two issues. I certainly agree with the Minister in relation to getting rid of clause 53(1) in the Bill as was originally introduced. I can quite see that the requirement to determine applications by reference to the objects of the Act would be productive of a great deal of argument and in all likelihood a great deal of litigation. Having regard to the obligation of

the court to state its reasons in relation to applications, it would be almost impossible for the court in considering applications to answer each of the objects of the Act because, to an extent, some of those objects are inconsistent with each other, as well they must be.

For example, encouraging a competitive market on the one hand and furthering the interests of the liquor industry on the other are not necessarily compatible. So, I agree that existing clause 53(1) is undesirable. However, it seems to me that proposed new subclause (1) is offensive where it provides that a licensing authority is not to take into account the economic effect on other licensees in the locality affected by the application. It seems to me that that injunction is really inconsistent with the philosophy that underlies the whole of the liquor licensing legislation. There is no doubt that liquor licensing legislation has been in force and licences are granted for the purpose of granting a form of statutory licence or monopoly to the holder of a licence.

The Hon. K.T. Griffin interjecting:

The Hon. R.D. LAWSON: Well, the legislation has all sorts of hoops that an applicant has to jump through, all sorts of requirements that an applicant has to satisfy, and all sorts of expenses that an applicant has to incur ultimately to get the licence. In many cases, especially in relation to retail bottle stores and hotels, the reason the licensee is going through all those hoops and going to a great deal of expense is for the purpose of getting some form of statutory licence or protection from competition.

Clearly, throughout the whole history of our licensing, people have been making substantial investments in this industry on the understanding that they would receive a right that was worth having. Now to say that the authority can grant licences with an unqualified discretion—I do not have any quarrel with that—fails to recognise that the authority is not to take into account the economic effect on other licensees who only last year might have spent a vast amount of money in establishing licensed premises and facilities for the community in the expectation that the licensee would be able to service a particular market at least for some time.

It seems to me—and I would appreciate the Attorney's comments on this—that this new provision introduced not to take account of the economic effect on other licensees is a very harsh introduction to this regime. Although I cannot immediately find it in Mr Anderson's report, I note that he did recommend some provision of this kind. What particular competition principle or requirement was he relying upon when he suggested that this provision be inserted?

The Hon. K.T. GRIFFIN: With respect to the honourable member, what he indicates may have been the rationale for liquor licensing a while ago is no longer the rationale, particularly in the context of competition policy. We are endeavouring to put this into a more competitive framework, and the industry has accepted it. We want to say that the licensing authority cannot take into account economic effect on other licensees in the area, but—

The Hon. Anne Levy: Community need.

The Hon. K.T. GRIFFIN: My amendment to clause 58 provides:

> An applicant for a hotel licence must satisfy the licensing authority. . . .having regard to the licensed premises already existing in the locality in which the premises or proposed premises to which the application relates are or are to be situated, the licence is necessary in order to provide for the needs of the public in that locality.

You can go to a regime where you say it is open slather. The Government has decided that is not an appropriate policy position—

The Hon. A.J. Redford: It's the next step.

The Hon. K.T. GRIFFIN: I am not saying that it is the next step or anything: I am just saying that it is not an appropriate policy position that the Government believes ought to be taken. We are trying to get a balance, recognising that hotels spend a lot of time and money building facilities for a local community. In the regime which has developed over many years they have had a relative assurance that they will be able to invest those large sums of money with some likelihood of a reasonable return.

We are saying that no longer do you take into account the economic effects of granting another licence down the street and that you have to look at the community need—and that is opening up the market. As I say, the hotel and liquor industry have accepted that, notwithstanding the challenges which that presents, they live with it, as others live with other aspects of the Bill. Whilst it might be harsh, the fact is that it has been accepted as a development with which the industry at large can live. It is a proper balance to propose in relation to this legislation.

Amendment carried; clause as amended passed.

Clause 54 passed.

Clause 55.

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

> Page 28, lines 30 and 31—Leave out 'to hold a licence or to occupy a position of authority in a trust or corporate entity that holds a licence' and insert 'for a particular purpose under this Act'.

This amendment addresses a difficulty in interpretation identified by the Australian Hotels Association. On the present wording of the Bill, a person approved under clause 97 to manage the business becomes a person in a position of authority by virtue of the definition of a person in a position of authority. However, this occurs only after the person has been approved as a manager. Therefore, as the Bill currently stands, such a person is not required to satisfy the fitness and propriety requirements. This simple amendment will ensure that all persons must be fit and proper.

Amendment carried; clause as amended passed.

Clauses 56 and 57 passed.

Clause 58.

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

> Insert new clause as follows:
>
> 58. (1) An applicant for a hotel licence must satisfy the licensing authority by such evidence as it may require that, having regard to the licensed premises already existing in the locality in which the premises or proposed premises to which the application relates are or are to be situated, the licence is necessary in order to provide for the needs of the public in that locality.
>
> (2) An applicant for a retail liquor merchant's licence must satisfy the licensing authority that the licensed premises already existing in the locality in which the premises or proposed premises to which the application relates are, or are proposed to be, situated, do not adequately cater for the public demand for liquor for consumption off licensed premises and the licence is necessary to satisfy that demand.
>
> (3) A reference to licensed premises already existing in a locality extends to premises in that locality, or premises proposed for that locality, in respect of which a licence is granted, or to which a licence is to be removed, under a certificate of approval.

I oppose the existing clause, and have moved to insert this new clause. During the review of the Act the Liquor Licensing Commissioner expressed concerns about the existing needs of the public test in the present section 63 of the Act. His concerns related to experiences where an applicant for a

licence obtained a licence based on submissions on the needs of the public criteria and then later proceeded with an entirely different style of operation. For instance, an applicant granted a hotel licence on the basis of a public need for a five star hotel then proceeded to open and run a traditional hotel with the facilities one would expect to see in such premises, including large-scale discotheque entertainment. The test in the current Bill was intended to address these types of matters.

However, concern has been expressed by the industry that the new test is based simply on the demand for liquor and ignores the other facilities such as dining, entertainment, accommodation and the provision of reception facilities. It was contended, quite rightly, that this concentration of liquor to the exclusion of these other facilities was inconsistent with the harm, minimisation and public interest objects of the Bill. Accordingly, it has been decided that the better way to address the concerns raised by the Commissioner is to impose conditions on the licence to ensure that the nature of the business to be conducted under the licence conforms with representations made to the licensing authority in proceedings for the grant of the licence. This will mean that a breach of these conditions will bring the licensee within the disciplinary provisions of the Bill. This provision is now included in clause 43.

As it is the Government's intention that less rather than more litigation flow from the wording of the Bill, it has been decided that the new test should be replaced with the existing section 63 test which is quite settled and well tested in the licensing area. As members will note, the test to gain a hotel licence—the needs of the public test—is different from the public demand test for a retail liquor merchants licence. This difference in tests reflects the very different roles of the two licences.

A hotel provides a number of diverse services to the public, aside from the sale of liquor for consumption on and off the premises, including the provision of meals, accommodation, gaming and TAB facilities. In contrast, a retail liquor merchant sells liquor to the public for consumption off premises. The different tests reflect the foregoing differences in operation.

The Hon. A.J. REDFORD: Before lawyers whom I thought would lose their livelihoods in relation to clause 53 have a glimmer of hope when they look at clause 58, I point out that there will be endless debate in the Licensing Court between what is meant by the term 'provide for the needs of the public' as opposed to something akin to 'do not adequately cater for public demand'.

If the Attorney does not want to comment I will understand, but the only remark I would make is that there is an opportunity for an opponent to a licence application to bring into account the economic effect on an applicant for a licence in endeavouring to show whether or not the needs of the public are necessarily provided for in relation to a hotel licence. I am not sure that I will get a simple answer on that, but I can see a glimmer of hope for those four impoverished lawyers whom I mentioned earlier this evening.

Clause negatived; new clause inserted.

Clauses 59 and 60 passed.

Clause 61.

The Hon. K.T. GRIFFIN: This clause is opposed with a view to inserting a new clause which is consequential on the earlier amendment to clause 58. I move:

Insert new clause as follows:

61.(1) An applicant for removal of a hotel licence must satisfy the licensing authority by such evidence as it may require that, having regard to the licensed premises already existing in the locality to which licence is to be removed, the licence is necessary in order to provide for the needs of the public in that locality.

(2) An applicant for the removal of a retail liquor merchant's licence must satisfy the licensing authority that the licensed premises already existing in the locality in which the premises or proposed premises to which the licence is to be removed do not adequately cater for the public demand for liquor for consumption off licensed premises and the removal of the licence is necessary to satisfy that demand.

(3) A reference to licensed premises already existing in a locality extends to premises in that locality, or premises proposed for that locality, in respect of which a licence is to be granted, or to which a licence is to be removed, under a certificate of approval.

Clause negatived; new clause inserted.

Clauses 62 to 70 passed.

Clause 71.

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

Page 35, line 23—After 'while' insert 'on duty'.

This is to ensure that it is clear that an approved manager must wear identification only while on duty on licensed premises.

The Hon. ANNE LEVY: I indicate the Opposition's support for the amendment. However, I raise a query on clause 69. In terms of extending trading areas, there is concern that under subclause (2)(e) a council would be involved only if the relevant place is actually under the control of the council and that extension of trading areas that are not under the control of the council could occur without any council involvement.

It has also been suggested to me that, if the extension of the trading area involved any building works, the council would be involved because it would have to give planning permission. It is possible that there could be extension of a trading area without any building works being undertaken that required council approval and that as a result the council would have no input or say, even though it might considerably change the amenity of the area.

The Hon. K.T. GRIFFIN: If it is a property which is under the control of the council such as parks, gardens or ovals, the council would have some involvement. If it is not council property, it would have no involvement unless a Development Act issue arises on which the licensing authority would require compliance before any licence or extension was granted. The question that must be asked is this: if council has no control over a piece of land other than in relation to building and development, why should it have a say, if it was an outdoor area, unless it became a planning matter?

The Hon. ANNE LEVY: It could be argued that the council represents the local community, being a democratically elected body, and that extending the trading area might greatly increase the number of people who visit the area and the level of noise which emanates from the trading area, and that could affect the amenity of the locality. As the representative of the locality, the council should be able to have a say, although I agree that, if any development is involved, the council would have a say by means of the Development Act. For example, change of use might require planning permission.

The Hon. K.T. GRIFFIN: I draw the attention of members to clause 76(2) which gives the council a right of intervention. It provides:

A council in whose area licensed premises or premises proposed to be licensed are situated may intervene in proceedings before a

licensing authority for the purpose of introducing evidence, or making representations, on any question before the authority.

That would deal with it in most instances.

Amendment carried; clause as amended passed.

Clauses 72 and 73 passed.

Clause 74.

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

Page 37, line 26—Leave out 'under receivership or official management' and insert 'under administration, receivership or official management'.

This is to ensure that a licensee under administration is also covered by this provision.

Amendment carried; clause as amended passed.

Clauses 75 and 76 passed.

Clause 77.

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

Page 38—

Lines 28 and 29—Leave out 'or a retail liquor merchant's licence'.

After line 31—Insert—

(ba) in the case of an application for the grant or removal of a retail liquor merchant's licence—that the grant of the application is not necessary in order to provide for the public demand for liquor for consumption off licensed premises in the area in which the premises or proposed premises to which the application relates are situated;.

The first amendment is consequential in part on the amendment to clause 58. It removes the retail liquor merchant's licence from this clause, which deals with the right of objection to a grant of a hotel licence on the grounds that it is not necessary to provide for the needs of the public. This ground of objection is relevant only to the grant of a hotel licence.

The second amendment relates to that and inserts a ground of objection for a retail liquor merchant's licence on the basis that it is not necessary to provide for the public demand for liquor for consumption off licensed premises.

Amendments carried.

The Hon. ANNE LEVY: I have a query with regard to clause 77(5)(f) which deals with the grounds under which objections can be made and provides:

that if the application were granted—

(i) undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the premises or proposed premises. . .

I do not disagree with what is provided, but is it broad enough? I cite the example of netball courts adjacent to premises about which an application is being made. The many people who play netball—it is the most commonly played sport in South Australia—do not reside, work or worship on the netball courts but nevertheless could be severely inconvenienced or disturbed if a great hotel suddenly sprang up next-door to their netball courts. Does paragraph (f)(i) need to be expanded to take into account people who undertake recreation or will paragraph (f)(ii) cover this situation and enable the netball players to lodge an objection to a great hotel going up next-door to the courts on which they may play night netball?

The Hon. K.T. GRIFFIN: I do not agree to any amendment. The provision is in almost identical, if not identical, terms with the provision in the present Act. Whilst local government did request that this be extended to deal with anybody who was in the vicinity, I think that that is much too broad. I do not think it is sufficiently identifiable and it may relate to a transient population or use for a particular facility nearby. I draw attention to the fact that a council can intervene. There is a power of intervention: if a council feels strongly enough about it it can intervene. I think that that protection is more than adequate—it is more than they have at the moment—and it does provide a valuable safeguard.

Clause as amended passed.

Clauses 78 and 79 passed.

Clause 80.

The Hon. M.J. ELLIOTT: I move:

Page 40, lines 13 to 15—Leave out paragraph (c) and insert:

(c) for a producer's licence—11 per cent of the gross amount paid or payable to the licensee for liquor (other than wine or brandy) by purchasers who are not liquor merchants during the relevant assessment period and, if the gross amount paid or payable to the licensee for wine and brandy by purchasers who are not liquor merchants during the relevant assessment period exceeds $2 million, an additional amount equivalent to 11 per cent of the excess.

I raised concerns about the producer's licence during the second reading debate and have taken the opportunity to take a closer look at the figures behind it. From inquiries I have made I have been able to ascertain that there is only one licensee with cellar door sales over $10 million. In fact, that licensee has cellar door sales of $42 472 090 and the licence fee, if it were assessed, would have been $4 671 930. There are no licensees with cellar door sales in the range $5 million through to $10 million and there are nine licensees with cellar door sales in the range of $1 million to $5 million. The total cellar door sales of those nine licensees is $16 million, which means that they are averaging a bit less than $2 million each and the licence fee, if assessed, would be $1.7 million.

Altogether the State is forgoing in licence fees $9.3 million—not an inconsiderable sum. It is worth noting once again that half that figure is attributable to one cellar door company, Cellarmaster, which also trades under the name Dorrien Estate. I have been quite astonished that this State, which is always battling to find enough dollars and unfortunately is doing a lot of damage because of a lack of dollars, so willingly forgoes a licence fee. The Government talks about the need for competition—and I think fair competition—and a level playing field and so on, yet is prepared not to insist upon it in this particular case.

The fact is that these big operators are not doing genuine cellar door sales but are selling by mail order and are in direct competition with other outlets in the market place—hotels and bottle shops—which have not been granted the dispensation of the 11 per cent licence fee. That is very uneven competition and I would like to know how the Government can justify the exemption. In the early days—over 20 years ago—I remember going to cellar door sales. When you arrived at the winery somebody was not waiting for you; they were out the back working, and after you made enough noise they wandered out and would give you a taste. In the early days cellar door sales were something of a novelty and a nuisance, and no appreciable amount of money was made out of them.

I imagine that the then Government decided that collecting the fee was more trouble than it was worth and if an encouragement for cellar door sales could be made that would be a good thing. There is no doubt that the boutique wineries and cellar door sales were very important in the growth of the wine industry in South Australia, and that genuine cellar door sales continue to be an important promotional tool and add a vibrancy to our industry. But we are not talking about genuine cellar door sales here with some of these operators, in particular the big ones—and the Government knows it. The Government knows that a loophole is being exploited by one

company in particular. That company is not doing anything illegal, but it shifted its operations from Sydney to South Australia on the basis that it found the loophole in the law.

I cannot believe that other operators will stand by for much longer if the Government condones the use of that loophole, which it could effectively do here by rejecting the amendment. It will then give the message to other operators that this is the way to go, and we will see a significant increase in mail order sales which will hurt the genuine investors, the people who are running bottle shops and hotels.

I suggest to the Attorney-General that by putting in a threshold figure of $2 million at most we would be picking up about five operators, perhaps fewer. As my amendment reads, it would only apply to sales over $2 million, so in terms of all but one of the operators they would then be realistically operating at somewhere around 5 per cent, which is still a significant discount on their overall sales, and even the biggest operator still will be getting a few hundred thousand dollars money for jam out of the generosity that this would allow. It would allow genuine and significant cellar door sales to continue.

The Hon. K.T. GRIFFIN: The Government rejects the amendment and will certainly not be supporting it. The honourable member refers to a loophole, and I suppose we can argue for a long period of time about what a loophole is or is not. The fact of the matter is that the law allows bodies such as Cellarmaster to operate in this fashion. If we chose to address that issue and pass legislation which sought to impose a liability upon them and others, particularly other wine producers, I am sure that we would be met by criticism from the honourable member and perhaps members opposite that we had broken an election promise by introducing a new tax or fee.

The Hon. M.J. Elliott: You know I will not do it.

The Hon. K.T. GRIFFIN: The honourable member is prepared to put up an amendment; but he has been critical of other actions of the Government on occasions which he has categorised as a broken promise and in relation to this one the Government is not prepared to budge. Putting that to one side, the premise upon which he argues is incorrect and I want to give some facts. Mr Anderson QC did recommend that all retail sales, not just mail order sales by producers, should be subject to licence fees with the proviso that small producers, that is, producers with retail sales less than $20 000, should be exempt.

That recommendation was met with considerable concern from the wine industry which argued that this would have a devastating impact on the wine industry. The South Australian Wine and Brandy Industry Association, which was represented on the working party established to advise on the Bill, argued vigorously that this recommendation should not be adopted. So that was one part of the equation. The second was the issue of mail order sales. I think I need to repeat what I said at the second reading reply, namely, that because there were conflicting claims about this issue I did establish a small working group comprising representatives of Treasury and Finance, the Economic Development Authority and the Liquor Licensing Commissioner to have a good look at this and to really get behind the argument to establish what was or was not the case. Because the main focus is on Cellarmaster I think it is important to give some brief explanation of how it operates, because, as I say, the debate is really centred on this company rather than on mail order activity in general.

It is by far the largest mail order company operating from South Australia, and probably in Australia. Many South Australian producers engage in mail order sales which would be assessable if licence fees are introduced, but they are not operations on the same scale as Cellarmaster. There has been a lot of misinformation circulated about Cellarmaster and I am sure many members do not appreciate how the company operates. There seems to be a general view that Cellarmaster is not a genuine producer. That is not the case. Cellarmaster holds two licences in South Australia, a retail liquor merchant's licence and a producer's licence. Cellarmaster's 1997 licence fee for its retail licence operations is $1.248 million, which is based on retail purchases in 1995-96 of $11 341 000. Cellarmaster currently has a tank storage capacity at its Dorrien facility of 5.5 million litres. It also has 2.1 million litres in hogsheads. The company employs seven winemakers and it has 530 acres of which 200 are currently planted. During the last vintage Cellarmaster produced 2 500 tonnes of grapes and produced, under contract, 7 million litres of wine.

Contract production is not unique to Cellarmaster; it is common practice adopted by large and small producers alike. In fact, Cellarmaster is subject to closer scrutiny than any other producer because the Liquor Licensing Commissioner requires Cellarmaster to submit its pre-vintage contracts for assessment prior to entering into agreements. The Commissioner then assesses the agreements and gives a direction as to whether the particular contract production constitutes production. Cellarmaster operates as a genuine producer and its operations comply with the producer's requirements in clause 39 of the Bill. It should be remembered that the requirements in clause 39 have the full support of the wine industry and the industries represented on the working group, including the Liquor Stores Association of South Australia.

Cellarmaster has extended its South Australian holdings in the Barossa and in Eden Valley. In addition, Cellarmaster operates the Australian Bottling Company, which carries out a large part of this State's contract wine bottling, including all of Cellarmaster's. Cellarmaster employs 290 staff in South Australia and is a significant contributor to the economy of the State's wine regions. It should also be recognised that only about 7 per cent of Cellarmaster's sales are to South Australians; therefore, even though the Liquor Stores Association has mounted a vigorous campaign to have mail order sales subject to licence fees, in practice the South Australian sales only amount to around $3 million annually. Therefore, only a small proportion of Cellarmaster's total sales under its producer's licence are potentially competing with sales by South Australian liquor merchants. Cellarmaster is a genuine producer, a significant and successful South Australian company which makes a significant contribution to the State's wine industry.

It is also important to recognise that, if South Australia were to impose a licence fee as proposed by the honourable member, if the company were to leave South Australia it would be able to find a haven, if one could describe it as that, in either Western Australia or Victoria, where the same situations apply as apply in South Australia. So what good purpose is served by the South Australian Government and the Parliament agreeing to impose this sort of impost when in fact it may have the effect of driving away a successful company which produces a significant amount of wine, having an impact not only on Cellarmaster but on a number of significant large and small wine producers in South

Australia? It is for those reasons that the Government does not except and will not support the amendment.

The Hon. M.J. ELLIOTT: The Attorney set about rebutting a whole lot of arguments I did not make. I want to concentrate on a couple of points. The Attorney-General said that the Anderson inquiry recommended a threshold of $20 000. The threshold in the amendment I moved is 100 times greater.

The Hon. K.T. Griffin interjecting:

The Hon. M.J. ELLIOTT: Mr Anderson's recommended threshold was $20 000, and I can understand why the wine industry would react to that, because in fact only 58 of the 194 producers would have fallen below the threshold. Quite plainly, the wine industry would have had great concern about that; but, on the other hand, when you go to a threshold of $2 million you are talking then about five licensees at most, and even as the tax would only apply above the threshold it would still have a significant benefit for all but one of the operators. While the Attorney now says it is only 7 per cent of the market, nobody would believe that that market share—and I do not mean for just that one company but for other similar operations—will remain at 7 per cent of the market. If there is an 11 per cent cost advantage to be had by such sales, one has to acknowledge that, if that remains, it will grow.

The one point that the Attorney did make—and the only reason why this is being opposed—relates to the company and whether or not there is a threat that it might leave. It is the old problem we always have when States have different laws and lowest common denominators, and the laws get undermined. It appears that in this place the State is prepared to play that game. The question will be not at what cost now but at what cost later on. First, a cost in terms of other operators growing in that industry and the other forgone tax that that will contribute to; and, secondly, the impact upon people already operating in the market who will lose market share and a number of whom could go broke as a direct consequence.

The Hon. ANNE LEVY: I have given a great deal of consideration to this issue and maintain that it is not a clear cut issue one way or the other. On balance, however, I come down on the side of the Attorney-General, while admitting that there are points to be made on the opposing side. But I do feel that the fact that Cellarmaster—the company about which we are talking—has only 7 per cent of its sales in South Australia means that it is not impinging a great deal on its competitors within South Australia. Its main effect is on competitors in other States, which need hardly be the concern of this Parliament. Cellarmaster employs about 300 South Australians, many of them in the Barossa Valley, and we should all be very concerned at any action that might lead to further unemployment. There is already far too much unemployment in this State, and that is by no means limited to the metropolitan area but would extend to rural areas such as the Barossa Valley.

There is no doubt that Cellarmaster could leave South Australia—it would not be difficult for it to do so—and take refuge in another State. Consequently, we would not gain the revenue to which the Hon. Mike Elliott refers: we would merely have 300 more unemployed South Australians. The Hon. Mike Elliott suggests that its proportion of the local market will grow and that it can adversely affect its competitors within South Australia. Cellarmaster has been operating in South Australia for nearly 10 years now and, even with the apparent advantage it has of not having to pay the licence fee that other retail liquor merchants pay, it has managed to have only 7 per cent of its sales in South Australia.

If the Hon. Mike Elliott is right and it greatly increases its market in South Australia, then at that stage it may be time for the Government to look at it. But when it is only 7 per cent I do not feel that it is posing a problem for competitors in South Australia. I am more concerned at this stage about the possible unemployment that might result if Cellarmaster decided to leave South Australia and go interstate. I agree completely with the Minister that Cellarmaster is definitely a producer. The figures and the work it undertakes in South Australia clearly put it in the category of a producer, and one of the larger producers in South Australia. It produces far more wine than many smaller wineries, and to argue that it is not a producer would be futile.

But, as I say, while I appreciate the argument put by the Hon. Mike Elliott, I feel that currently there is not a problem of Cellarmaster versus its competitors in South Australia and I think it better to consider the 300 jobs it provides as being more important at this time and as having a greater effect on South Australia than any slight increase in revenue, which would probably be very slight because Cellarmaster might well go interstate.

The Hon. T. CROTHERS: Yes, I, too, rise to oppose the amendment.

The Hon. A.J. Redford interjecting:

The Hon. T. CROTHERS: We've won more than you have: you keep losing all the time, so we're told.

The Hon. L.H. Davis interjecting:

The Hon. T. CROTHERS: They could. I don't know about 'roll' me, but people such as the honourable member sometimes stave me in.

The CHAIRMAN: Order!

The Hon. T. CROTHERS: I oppose the amendment because it has been cobbled together in haste and, in my view, it will cause us a great deal of grief up the track.

The Hon. M.J. Elliott interjecting:

The Hon. T. CROTHERS: If the honourable member stops smiling; if the honourable member listens to me instead of some of the lobbyists that have obviously approached him on this amendment, then he might emerge a wiser and more rational person. What this amendment—

The Hon. L.H. Davis: It is a pity you don't listen to your own rhetoric.

The Hon. T. CROTHERS: I don't listen to yours, that's for sure. Not only does the company referred to own a bottling plant but it is a viticulturist, too, and it produces. What the honourable member is saying is that it would be the only company that would have this 11 per cent put on it at the point of production, because not only does it purchase bulk wine for bottling but it produces its own bulk wine. There is an anomalous situation in respect of the 11 per cent. The honourable member must have plucked the 11 per cent figure from the retail liquor tax that the hotels pay. The bottle shop owners, whence comes this lobby, were the first people, in my view, to start the discounting of beer. I remember a long time ago when La Vista Wines was giving 15 for the price of 12.

The Hon. A.J. Redford: Who was doing that?

The Hon. T. CROTHERS: La Vista Wines. I used to load the trucks up for them. I used to take 34 pallets of beer a day, which is four times more than—

The Hon. L.H. Davis interjecting:

The Hon. T. CROTHERS: Why don't you go back there and give my ear a rest, Mr Davis? Why don't you please do

that and give us all a rest from your inane interjections? This would create an awful mess, perhaps even in respect of section 92 of the Constitution. If we impose a tax and, say, Western Australia and Victoria are exempt from that tax—bearing in mind that 93 per cent of the product of this company is exported interstate, mainly to the Eastern States—you run a fairly strong chance, if this company wanted to spend the money to stay in South Australia, of possibly successful litigation under section 92 of the Constitution, free trade between the States, given that this is the tax that you are now imposing as an afterthought in respect of an event that has existed for some years.

As I say, we have neither the one thing nor t'other. We have a company, an entity, that is not only a purchaser of bulk wine but a producer of bulk wine. Does the 11 per cent apply to all the wine that that company puts out through its bottling hall? I do not know. I guess that litigation aplenty will flow in respect of this matter.

It is not without some significance that one of our rapidly expanding wine growing areas is located in the South-East of the State, where many hundreds of people are employed in the wine industry. It is not insignificant that across the border in Victoria there are no wineries of significant note, but there could very readily be. This State produces approximately 65 per cent of all wine produced by viticulturists in Australia. The Federal excise tax on beer is much more severe than it is on wine, and there is a very good reason for that: that is a position that my own union whence I come, the Liquor Trades Union, has always supported because it recognises that decentralisation has great validity in respect of minimising the strains that are placed on Australia's urban city centres, and that the more we can decentralise into rural areas the better the quality of life will be for all Australians.

I understand, for instance, that this company employs 287 people, the bulk of whom—with the exception of the bottling line at Lonsdale which employs about 40 people—(250 or so) would be employed in rural areas. The company has 500 acres, 200 acres of which are already planted, so there is the potential for 150 per cent more wine to be produced on that block once it becomes fully planted and the vines start fruiting. That 500 acre block already produces 7 million litres of wine and my calculations indicate that it can produce upwards of 17.5 million litres of wine.

Also, do we levy the tax on the company if it buys grapes from small blockers, as I understand it is doing? It is buying grapes from small blockers and putting them through its own crushing plant. It is crushing its own grapes. Do we impose the tax on that? When does one become a producer of wine that attracts that sort of tax, and when is one not a producer on whose goods the Mr Elliott seeks to impose a levy of 11 per cent? I believe that the Hon. Mr Elliott's amendment is opportunistic and electoral and one which he has cobbled together after listening to some information that he thought would put his name up in neon lights.

I speak as one who really knows the industry. I am not a part-time sultana blocker from the Riverland; I am not one of these people who is a Bollinger bolshevik in respect of being in support or otherwise of wine: I am a bloke who has spent many years as the union organiser in the Barossa and Clare Valleys, the Southern Vales, the South-East and the Hills area of the State. Those who know me would hardly say that I am a stupid person. I pride myself on being a pretty quick learner in respect of these matters. I believe that the amendment moved, for whatever reason, by the Hon. Mr Elliott (and I may be wrong in my suppositions—who knows? Perhaps I am too cynical sometimes) will cause us more grief than it will ever do good, because mail order is here to stay.

If one sees what is happening with the situation in the United States and if one looks at the way computerisation is heading in respect of ordering up, one sees that it is obvious that very clever people are behind it. One can now see how one will be able to order up, not by mail order, but by placing orders on the Internet. There is no telling just how far this organisation can develop in respect of production and employment. It has chosen to come to South Australia. It came here from elsewhere. It chose to come to South Australia, and South Australia has always kept in advance of wine producers. More and more viticulturists are being trained, more vineyards are being planted and Victoria and Western Australia are producing more wine; even Tasmania has burgeoning vineyards. But it is the export market that is growing.

Already we are exporting approximately—and the economist, the Hon. Mr Davis, will tell me if I am wrong—$500 million to $600 million worth of wine per year. The industry anticipates that, if production increases, it will export about $1 000 million worth of wine, of which—

The Hon. L.H. Davis: And 70 per cent from South Australia.

The Hon. T. CROTHERS: Actually, 67 per cent. I know the honourable member is a goose for accuracy, but it is 67 per cent. That is the position. The company has come to South Australia. What do we want to do? Drive it away in respect of the interests of people who commenced the discounting of beer and other products in the first instance? Is that what we are doing because, if it gets up, that would be the effect of this amendment. I do not think it will, but that will be the effect. This amendment will cause us more grief in respect of problem making than it will in respect of problem resolution.

I think there would be a case for successful litigation under section 92 if this company chose to go that way. I doubt if it would. It would up and do what many wineries did years ago: move out of South Australia to Robinvale, on the other side of Mildura, because that area afforded tax advantages to wineries in respect of the bulk cartage of their juices. It is not a question of ignorance that forces me to my feet to oppose this amendment; rather, it is a question of some knowledge that has been garnered over the years.

It is very wise of the Government and the Opposition to oppose this amendment. It has not been thought through. God knows the damage it can do and maybe will do to us in respect of the operations of this company within this State. As I said, we have an opportunity if we think it through, because mail order will be history in five or six years, perhaps sooner: it will be done by computer. The same people who are now ordering by mail order will be ordering by computer. We have a head start. We have the biggest company in the industry involved in the State and it is operational. Let us ensure that we reject this amendment so that again South Australia can show a little vision in its viticultural pursuits to ensure that it not only retains but also, where possible, increases its lead and hold as the major supplier in the Australian wine industry.

It is one of the few industries that is still a major employer in rural areas. It is one of the few industries that can, if you like, add some impetus to the continued existence of Angaston, Nuriootpa, Greenock and other towns of that ilk that are centred and located in the wine-making industry in this State. I oppose the Elliott amendment.

The Hon. M.J. ELLIOTT: I will not address all that was said by the honourable member. I am sure that the Australian Constitution would not become involved in the issue at all. Suggestions have been made that the company might get up and shift interstate. I doubt very much that it will pull out its vines, cart them over the border and shove them in the Yarra Valley.

An honourable member interjecting:

The Hon. M.J. ELLIOTT: The fact is that, at this stage of the wine industry's history, if there is arable land in the Barossa that has enough water to grow vines, it will have vines in it, whether or not this company is there. Those grapes will be picked and crushed in a winery in the vicinity, whether or not that company remains. It might be true that the State would not get the full benefit of the tax in that the operation would shift interstate so the prospective gain might not exist, but that still misses the more fundamental point that mail order as a whole is a major loophole that has grown significantly.

If we are not careful we may entrench it and see mail ordering grow even further, and it will affect other parts of the industry. Even indirectly, it will affect other wineries, because those wineries that are selling through the bottle shops and paying 11 per cent will be competing in the same marketplace. So, downward pressure on price will still operate on everyone. That will work its way through the whole market, because they are all competing against someone who is not paying that 11 per cent. It will impact not just on bottle shops. If you had talked to wine grape growers when things were bad only four our five years ago, they would have told you that as little as 5¢ a bottle was enough to have the impact of doubling their income. People need to realise that with 11 per cent on a bottle the costs tend to get passed back, although that will not happen now while there is a shortage of grapes. However, it is likely—

The Hon. L.H. Davis: Is the Democrats' theme song 'Always look on the bright side'?

The Hon. M.J. ELLIOTT: I think that must be your theme song. I have lived in the Riverland for a number of years; I know many grape growers; and I know what was happening to them and why it was happening.

The Hon. L.H. Davis: They're doing extremely well.

The Hon. M.J. ELLIOTT: They are doing well at the moment, but the point is that everything is cyclic: things go up and down and eventually the shortfall in grapes will be overcome.

The Hon. A.J. Redford interjecting:

The Hon. M.J. ELLIOTT: You are missing the point. We are not talking about Cellarmaster alone: we are talking about the fact that some people operating in the market are enjoying a significant discount as against others in the same market, whether it is Cellarmaster or anybody else. While it is genuine cellar door sales—and that is why that loophole existed: it was there for it was there for good reason to start off with—it is not a problem. However, if it becomes a major part of the market, it is. The Government might say that at 7 per cent it is willing to bear it, but the question is how long it will stay at that level—but I can count.

I want to respond to the Minister's comment about taxation. The Democrats have been on the record on a number of occasions saying that we believe that the State should increase its tax take. Unlike the Opposition (and I notice that Mr Foley was doing it again today), we have not criticised the Government on any occasion when it has increased fees. The only time we will have a debate with the Government is when we think that the tax or fee increases have not been equitable. I agree with Mr Olsen in criticising the Government for making a promise before the last election that it should not have made, namely, that it would not increase tax. That was a major blunder. That is why the public schools and hospitals are in trouble at the moment—because there are not enough dollars to go around. The Opposition cannot have it both ways and scream about tax increases and try to keep the Government to that promise and also say that it wants schools and hospitals to be looked after. I am concerned about schools and hospitals and that promises were broken in relation to them, but I do not mind the tax promise being broken; I will support the Government in breaking that promise, as long as it does it equitably.

The Hon. K.T. GRIFFIN: I will make a couple of observations. The first relates to what the Premier is reported to have said in relation to the decision prior to the election to commit to no new taxes. He was not saying that he regretted it: he was reflecting upon some of the things that people might say about why we did or did not do certain things. He was not being critical of the decision that was taken but merely reflecting on a number of issues.

In relation to Cellarmaster, it is important to recognise that on the information I have it does not service the same market as do the retail liquor merchants.

The Hon. M.J. Elliott: They service wine drinkers.

The Hon. K.T. GRIFFIN: That is correct, but they do not service exactly the same market. On the information I have, prices for comparable wine are more expensive through the Cellarmaster mail order scheme than they are in some of the chain liquor stores. That must indicate that a different marketing need is being served.

The other point that needs to be made is that it involves not only the 290 employees that Cellarmaster employs but also all the others who depend upon it in the production of grapes or in the industries which service the production that goes through the Cellarmaster winery. That is more of an advantage to South Australia than imposing the additional licence fee. I appreciate the Opposition's support on this issue. My firm belief is that it is the right decision.

Amendment negatived.

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

Page 40, line 28—Leave out 'A licence' and insert 'A special circumstances licence'.

This amendment makes clear that the licensing authority cannot impose conditions relating to the assessment of licence fees on any licence other than a special circumstances licence. The discretion is necessary in this case because some special circumstances licences are an amalgam of producer, retail and wholesale. However, it is important that there be no such discretion in respect of other licence categories.

Amendment carried; clause as amended passed.

Clause 81 passed.

Clause 82.

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

Page 42, lines 15 and 16—Leave out subclause (4) and insert—

(4) The Commissioner may (in the exercise of an absolute discretion) remit a fee payable under this section wholly or in part.

This amendment mirrors the provisions of the existing Act, which provides that this is an absolute discretion and is therefore not subject to review.

The Hon. A.J. REDFORD: Clause 82(4) provides that the Commissioner may remit a fee payable under this section in whole or in part. What sorts of matters does the Commis-

sioner take into account in exercising a discretion to remit a fee payable?

The Hon. K.T. GRIFFIN: There may be circumstances where the licensee failed to notify the Commissioner that the licensee had ceased to trade, and it may be that the actual cessation is not formally recorded until some months down the track. It may be that as a result of that there needs to be an adjustment to the fee. That is one of the examples where this power to remit would be appropriate.

The Hon. A.J. REDFORD: Before this matter is finally disposed of I wonder whether there could be some guidelines about the remission of fees. I once acted on behalf of a client when a mortgagee took possession, decided to do certain things and then sought remission of fees because the mortgagee would not continue to trade, and the Commissioner refused to pay the licence fee. I am not sure what apart from that should be the case. At the very least there ought to be some guidelines as to when he will not pay them back, because they are paying these taxes in advance because of this peculiar taxation system with excise taxes in this country. It seems to me as a matter of fairness that the executive arm of Government should not be entitled to annexe moneys at the total and utter discretion of the executive arm of Government. I can understand giving the executive arm of Government some form of discretion in certain cases, but without troubling the drafters I would like to know what sorts of matters are relevant to the exercise of a discretion. It needs to go a little further than saying, 'Well, they may have failed to tell the Commissioner that he or she or it stopped trading.'

One has only to look at the *Government Gazette* to see the number of section 80 applications under the existing legislation where mortgagees take possession or where licensed premises are suspended to know that in most cases the Commissioner is advised. As I say, this gives the Commissioner a complete and unfettered discretion. I am not asking for a response now, but before the final passage of the Bill I would like to see some sort of guidelines, because I do not believe that as a matter of principle any Government or any Parliament should say to the executive arm of Government that it can keep taxes at its total and unfettered discretion which on any moral analysis are due to be returned to a taxpayer.

The Hon. K.T. GRIFFIN: With respect to the honourable member, I am not prepared to develop any guidelines or give an undertaking for that to occur prior to the passage of the Bill through both Houses. It has to be recognised that under clause 82 the law is that a fee is payable. We are talking about a discretion in the Commissioner to remit a fee, that is, to refund it.

The Hon. A.J. Redford interjecting:

The Hon. K.T. GRIFFIN: You do not pay it in advance: you pay it on last year's sales. In those circumstances I think it is quite appropriate to have a remission power on the part of the Commissioner, because there may be circumstances in practice which in terms of equity would warrant a remission for a part of the period. I do not think you can make that subject to any guidelines or that you can in fact identify all the circumstances in which that might be exercised. In fact, it is a common power of Executive Government to grant remission.

The Hon. A.J. REDFORD: With respect, they are paid in advance. If you look at clause 82(3), which sets it out and shows it starkly, it provides that a new licence does not come into force until the first instalment of the licence fee is paid. As I understand it, you apply for your licence, you do an estimate of what you think your sales will be, you pay your fee and you pay it regularly thereafter. In reality, you are always paying ahead.

The Hon. K.T. Griffin: You are in arrears.

The Hon. A.J. REDFORD: With due respect, you are not. I invite the Attorney to speak to the Commissioner about that. My personal experience is that when you apply for a liquor licence you submit a form saying that you expect to sell X amount of alcohol in a given year, and you pay it before you get your licence and regularly thereafter. While you are assessed on your previous year's sales—once you have a previous year's sales—you are actually paying a licence fee in advance for the ensuing year. That is my understanding as to how the system works. If I am wrong, I remain to be corrected. It seems to me in those circumstances that it is entirely appropriate for there to be a set of guidelines, because the tax is being paid in advance.

The Hon. K.T. GRIFFIN: The honourable member is correct in that when a licence is granted an estimate is made of the likely sales and if there is less than a full quarter of the licensing year remaining you pay a lump sum and then in future years you look back to the calculation of that fee on what your previous year's sales were. Notwithstanding that, I cannot see how you can develop any guidelines which will deal with all the potential circumstances that arise to deal with remission. If you can do that you put it in the Act as to the actual calculation of the fee. With respect, I do not see how we can prepare any guidelines which mean anything that deal with remission of fees in a variety of circumstances.

The Hon. A.J. REDFORD: Would it be fair to say that it is within the purview of this legislation for the Commissioner in certain circumstances to make a decision which is arbitrary or perhaps even incorrect and not have that decision subject to any review?

The Hon. K.T. GRIFFIN: I cannot add anything more to what I have said. The provision is in almost identical terms with the current provisions of the Act. I cannot offer a suggestion as to how we resolve this. With respect to the honourable member, I do not intend to do anything unless he can come up with a suggestion that might be workable. I can take it no further.

Amendment carried; clause as amended passed.

Clause 83.

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

Page 42, lines 28 and 29—Leave out subclause (4) and insert—
(4) The Commissioner may (in the exercise of an absolute discretion) remit a fine payable under this section wholly or in part.

This is similar to the amendment to the previous clause.

Amendment carried; clause as amended passed.

Clauses 84 to 86 passed.

Clause 87.

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

Page 43, line 22—After 'the fee' insert 'on'.

This corrects a typographical error.

Amendment carried; clause as amended passed.

Clauses 88 to 94 passed.

Clause 95.

The Hon. ANNE LEVY: This is a very much simplified form of the Act, which sets out a number of conditions which must be satisfied in the returns. The Bill states that the returns must have information as set out in the regulations. While this is much simpler as legislation, is it expected that the conditions in the regulations will be virtually the same as those which are currently in the Act?

The Hon. K.T. GRIFFIN: The answer is 'Yes.'

Clause passed.

Clauses 96 to 98 passed.

Clause 99.

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

Page 48—
Lines 6 to 10—Leave out subclause (2) and insert—
(2) The Commissioner may, on application by an interested person, approve an agreement or arrangement if—
(a) the agreement or arrangement—
(i) is likely to assist the liquor industry and industries with which it is closely associated—such as tourism and the hospitality industry; or
(ii) is otherwise in the public interest,
or there is some other good reason for approving the agreement or arrangement; and
(b) the agreement or arrangement does not adversely affect the rights and reasonable expectations of persons presently in employment.
Line 15—Leave out 'Court' and insert 'Commissioner'.
Line 19—Leave out 'Court' and insert 'Commissioner'.

This reflects the basic nature of applications to share in profits. These applications are generally non-contentious involving questions of fitness and community interest rather than questions of law. The amendment is consistent with the general thrust of the legislation that non-contentious matters be dealt with by the Commissioner. This is not only expedient but is far less costly because an appeal will go to the Licensing Court, not the Supreme Court, as is currently the case. The amendment also expands the grounds on which such applications may be made to include any other good reason. The existing provision stifles quite genuine initiatives. The other two amendments are both consequential on the above.

The Hon. A.J. REDFORD: I congratulate the Attorney on this amendment. In my experience as a legal practitioner, I know that on many occasions a hotel in a smaller community would decide to cut down on the provision of meals and that would create an opportunity for someone in the community to provide counter teas in that hotel. The hotel proprietor would not have any interest in the enterprise other than the provision of the premises and by that means a service was provided. I am going back many years, but I know that it always seemed to be a complicated process.

In that regard I would be grateful if the Attorney could advise the Committee whether those sorts of arrangements will be looked upon kindly by the Commissioner. I would also be grateful to have an answer to one possible interpretation to subclause (2)(b) which provides that the agreement must not adversely affect the rights and reasonable expectations of persons presently in employment. There are occasions when the kitchen in a hotel is not paying simply because of the way in which the award rates operate. The kitchen staff might decide to run it, to improve the quality and to market it a bit better, and the hotel proprietor agrees to let them do so on those conditions. It might well be argued that, at least in the initial stages, they might not make award rates. Will such issues prevent this sort of arrangement, which can only be for the betterment of the industry?

The Hon. K.T. GRIFFIN: I am told that the present Commissioner has had only one instance in the last nearly 10 years and ultimately did not have to make any decision because the parties worked out the arrangements. Arrangements where the kitchen staff or other staff share profits are the type likely to be involved.

The Hon. A.J. REDFORD: One matter that has been raised with me in discussions is the increasing occurrence of service stations becoming convenience store service stations and putting in a Hungry Jack's or a McDonald's for the provision of fast food. Does the Attorney envisage that those sorts of arrangements might be facilitated under this clause? I can imagine hotels in various parts of the State being approached by or approaching a separate franchisee to put in something like that under the roof of licensed premises.

The Hon. K.T. GRIFFIN: The honourable member raised questions as to why anyone would want to do that. I understand that in Whyalla part of a licensed premises was used as a chicken shop, but in that case the licensee merely applied to excise that part of the premises which became the takeaway chicken shop. It is difficult to understand why a licensee would want to run that sort of operation and it is difficult to come up with an answer to a hypothetical question. The circumstance to which the honourable member refers is not a situation that we have had to address.

Amendments carried; clause as amended passed.

Clause 100.

The Hon. ANNE LEVY: I move:

Page 49, line 16—Insert paragraph as follows:
(ab) liquor must not be supplied to, or consumed by a minor, except under the following conditions—
(i) the liquor must not be supplied directly to the minor but may be supplied to a parent or guardian so that the parent or guardian is in a position to control the supply of liquor to the minor; and
(ii) a parent or guardian must be present when the minor consumes the liquor; and
(iii) the liquor must not be supplied to the minor, nor consumed by the minor, in a bar-room;.

This clause will be a conscience vote for the Opposition, as I hope it will be for the Government. It relates to the supply of liquor to lodgers, and we are here talking about lodgers who are staying overnight in licensed premises—in a motel, hotel or some such accommodation—which, for the time being, can be regarded as the equivalent of their home. The clause permits the lodgers to have liquor served to them and consumed by them at times other than when a bar or any other part of the licensed premises would be open to the public. This surely is a reflection of the fact that these premises can be regarded as the lodger's home and that the lodger can there drink liquor at any time as he can do in his own home.

However, the clause provides that this does not apply with regard to any liquor supplied to or consumed by a minor. My amendment provides that, in general in these circumstances, liquor cannot be supplied to or consumed by a minor except under the following conditions: that the liquor cannot be supplied directly to the minor but can be supplied to a parent or guardian who is in a position to control the supply of liquor to his or her child; that the parent or guardian is present when the minor consumes any liquor; and that the liquor must not be supplied to the minor or consumed by the minor in a bar-room.

If a family is staying overnight in a motel, which can in some ways be regarded as their home for the evening, and the parents can legally have liquor supplied to them at any time during the 24 hours, I am suggesting that, considering their lodgings as their home, whether or not a minor drinks is a matter which should be determined by the parents as it would be in their own home. Certainly parents can supply alcoholic beverages to their children of any age in their own home. We regard this as a matter of parental responsibility.

Although minors cannot drink in public until they are adult—that is, until they are 18 years of age—in their own home there is no legislation controlling what parents do and

the parents are free to provide liquor to their offspring if they wish. In many cultures alcoholic beverage is supplied to minors; it is taken as a normal thing in many families, particularly in some of our ethnic communities, where maybe wine is diluted with water. It is a matter for the family to determine.

My amendment suggests that the same would apply if a family is staying overnight in lodgings, that if the parents can be supplied liquor that it would be possible for those parents—not anyone else—to supply liquor to their children while they are lodgers, while their hotel room or motel room can be considered as their own home, and that no offence would be committed if an adult supplied liquor to their own child while they were in lodgings. I feel it is an extension of the family responsibilities, it is regarding people in lodgings as having a temporary home and the rules regarding the control of children by parents which apply in the home should also apply in the lodgings while they are temporarily there.

The Hon. K.T. GRIFFIN: The Government has not considered this as a conscience issue. I suppose one might reflect upon it as such but it has not been considered, so from that perspective I regard it as a matter for Government policy. However, individual members may still decide that they want to support it—it is really a matter for them, I suppose—but we have not taken the view that the honourable member has referred to. The substance of this amendment is not supported. Whilst the honourable member has used the analogy of these premises being, in effect, the home of the lodgers and children, nevertheless they are licensed premises and are available to members of the public. They are not restricted in their availability. The amendment does not apply only to a motel room; it can apply to the whole of the premises, and that makes it particularly difficult for enforcement of the provisions of the legislation in relation to the supply of liquor.

Both Government and Opposition have taken a very strong view, particularly when the roles were reversed about the desirability of ensuring that alcohol is not supplied on licensed premises to minors and there are very strong sanctions imposed against both employees of a licensee and a licensee in respect of the service of alcohol to minors in the circumstances covered by both the Act and now the Bill. I think it would be putting a very onerous responsibility upon licensees and their employees if we were to give the sort of flexibility which is proposed by this amendment. I do not believe that that is fair for licensees.

It is not a suggestion which has been canvassed, at least by me, with any of the industry participants. In fact, there was general acceptance by the working party that there ought to be very strict controls in relation to the availability of alcohol to minors on unlicensed premises. That was a combination of concern about the supply to minors and also the penalties which might apply where it is supplied by a licensee or a licensee's employees. The other point which is of a technical nature is that the amendment and then a subsequent amendment refer to a bar-room. Under liquor licensing law there is no such thing now, so if in fact the amendment is carried that would need to be amended.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: I am just making the point. That is not the issue of principal that I debate; I point it out as a technicality. But from my point of view and the Government's point of view we believe that the service of alcohol to minors on licensed premises ought to be very strictly controlled.

The Hon. CAROLYN PICKLES: I oppose the amendment. As the Minister has pointed out, this amendment does not just specify a room in a licensed premise; it could also apply to a restaurant in a licensed premise, and I think it does send out some rather strange messages to the public about the consumption of alcohol by minors in a licensed premise. I think what parents do within the privacy in their own home is one matter, but what they do in essentially what could be a public place is another matter. Certainly, when we had a Labor Government we had a very strong position about consumption of alcohol by minors in a licensed premise and I believe that this amendment goes against the spirit of that previous legislation. Therefore, I strongly oppose it.

The Hon. M.J. ELLIOTT: I will be opposing the amendment. There is certainly merit in an argument that says that it is best that perhaps if children are going to drink alcohol then parents educating them as to its use is a far better thing than them surreptitiously getting involved with alcohol, and often alcohol abuse, which I think is the usual path that a lot of young people take.

The Hon. Anne Levy: Not in the ethic communities.

The Hon. M.J. ELLIOTT: No, but it is still a case with many people that in fact the first alcohol is not had in the home but is had surreptitiously without the knowledge of the parents, and I think there is merit in an argument in terms of education about alcohol and its proper use, that if parents are involved in supply of moderate amounts and teaching them what moderation means, as long as the parents know what that means, that that is a good thing. However, I do think what the Hon. Anne Levy has done here has adequately addressed other problems that arise. We talk about bar-room here and the Attorney has also addressed that question, but if for instance the drink was served in a restaurant section you would have some people who were lodgers and some people who were not. Sitting at one table sitting would be parents with their children who could, because they were lodgers, actually give a small drink to their children while sitting at the next table would be another lot of guests who are not lodgers who could not do the same. There seems to be some logical inconsistency in that. I think the more likely circumstance is that the drink will be provided to lodgers probably in their own room or in an area which is not generally a public area, and in those circumstances I imagine that probably, despite the law, the parents would probably be able to supply it and there would not be any questions asked, anyway.

The Hon. Anne Levy: You are condoning the breaking of the law.

The Hon. M.J. ELLIOTT: The point I make is that you probably create more difficulties by trying to use amendments to the law in that I think there will be inconsistencies in terms of lodgers and non lodgers being in the same area, some being able to give drink to their children and some not, and then confusing it with the whole question of minors on a licensed property generally speaking not being able to receive liquor. I think it creates greater confusion and is probably more trouble than it is worth.

The Hon. P. HOLLOWAY: I also do not support the amendment. I certainly do not dispute the right of parents to supply alcoholic beverages to their children, although in view of the medical evidence I do not know that it is a particularly wise practice, and I would not condone it. But it is their right. I am aware that in ethic communities the practice is more widespread, although I guess the alcoholic content of a lot of those beverages is somewhat lower than the sort of alcohol

that most of us might drink. However, I would have less concern with the amendment if the excluded area related not just to a bar-room. If the amendment was confined to the lodge rooms of the parents then that would not concern me so much, after all parents have the right to supply alcohol to their children in their homes so I guess to the extent that lodge rooms become a *de facto* home it is less of a problem. But I would say that in those cases it would be almost impossible to prosecute any parent for supplying alcohol to their children within their own hotel room, anyway.

What concerns me is that this amendment could apply to other public places within a hotel, motel or restaurant and in that situation I believe it is possible that it could influence the behaviour of other minors. If you have some parents supplying alcohol to their children it may influence others and I think that would be unfortunate. If this provision was accepted it would certainly make it more difficult to police under-age drinking because we would have two categories: those under age who can drink in a public area and those who cannot, and I believe that that would make it much more difficult to police. So, on balance, I will be voting against the amendment.

The Hon. T. CROTHERS: I also rise to oppose the amendment. Like my colleague the Hon. Paul Holloway, if the amendment had confined the aim of the Levy amendment to rooms which were purely lodging rooms then it might have been a different kettle of fish for me. But the facts are (and perhaps the Attorney's advisers will advise me if I am incorrect) that plans for bar-rooms or places where liquor may be dispensed are submitted by the applicant on a ground plan of the premise to the Licensing Court in respect to the application for a licence and are delineated on that ground plan in red. Within the confines or parameters of that red line is delineated the bar area. Is that still the practice?

The Hon. K.T. GRIFFIN: The bar room is not delineated on the plan.

The Hon. T. CROTHERS: Suppose I build a new hotel and I apply to have it licensed, is it the practice to lodge a ground plan of the hotel in question and to delineate the areas from which beer can be dispensed by marking them out in red lines on the plan, and those areas confined within the parameter of that red line are the areas in which you can have a bar? Is that still the practice? It certainly used to be.

The Hon. K.T. GRIFFIN: No, you do not delineate. You delineate the whole of the premises and you do not identify—

The Hon. T. CROTHERS: But that used to be the case. So, it is no longer the case.

The Hon. K.T. GRIFFIN: Yes, it used to be the case but not any longer.

The Hon. T. CROTHERS: The problem I have with it is that in the gaming room, which is not a bar room, for instance, you could have a minor not playing the machines but drinking a beer—

Members interjecting:

The Hon. T. CROTHERS: Not allowed in the gaming room at all? Then, for example, it could be a dining room which does not have a bar but a minor could be in the dining room drinking with his or her parents. There are plenty of dining rooms which do not have bars and into which drinks are brought on a tray. That is the problem I have with the matter. Very often in our society today we are inclined to take away many of the rights that parents should have in respect of the upbringing of children, and I am for ensuring that they stay fairly constant. That is the problem I have with the amendment moved by the Hon. Ms Levy. I understand what the honourable member is saying. What the honourable member said about ethnic groups is true. It is true, for instance, in France, where there is a great tradition of having white and red wine at dinner and that all people in the family are involved in drinking that—

The Hon. Anne Levy interjecting:

The Hon. T. CROTHERS: Sometimes being rouge, but sometimes being blanc. Anyhow, I must oppose the amendment, even though I understand the import. Perhaps the timing of this amendment is just not right at the moment.

The Hon. ANNE LEVY: I realise that I do not have the numbers, but I need to correct some erroneous assumptions which various members have made. I apologise for having the term 'bar room'. That was supplied by Parliamentary Counsel and I would be happy to change that, not being a lawyer myself.

In relation to the idea that this would lead to differences where, say, in a restaurant one family who are lodgers could supply liquor to their children and at the next table another family who were not lodgers and the parents could not do likewise, members have not looked at clause 100(1)(a) which provides:

> if liquor is supplied to a lodger for consumption on the licensed premises and the licence does not. . . ..authorise the sale of liquor to the public for consumption on the licensed premises—

In other words, we are talking about out of hours times. We are talking about times when the ordinary public is not having liquor served to them. Only the lodgers are involved because the public is not present to cause this confusion. Members have ignored the first part of clause 100(1)(a), which is certainly relevant to what follows. We are talking about a situation where the public is not being admitted. It is the time when the lodgers can be regarded as being in their temporary home privately without the public being present.

The Hon. K.T. Griffin: You might have 500 lodgers in a big hotel.

The Hon. ANNE LEVY: Yes, you might have 500 lodgers in a big hotel, and if they all have children and all wish to give their children alcohol I see no reason why they should not. Presumably they do so in their homes, perhaps diluted with water, soda water, dry ginger or whatever is normal in their family. Many members of our ethnic communities in this multicultural society do just that in their own homes: they do provide alcohol to their children, appropriately diluted, for whom having alcohol is part of having a family meal. It is a normal family activity, and the children partake as appropriate to their age.

My reason for moving this amendment is that it would apply at times when the public was not present and when the lodgers could legitimately be regarded as being in their temporary home, or when the public could be present but could not be served alcohol—and one very rarely finds the public in licensed premises at times when they are not permitted to have alcohol. It is limited to the time when it could be regarded as the lodgers being in their own home.

Confusion has arisen through members not realising what is set out in clause 100(1)(a) which must apply before these conditions could be met. It may well be, as someone has said, that this is an amendment before its time. I certainly feel that it is a recognition of the multicultural nature of our society, where the attitude of parents to their children's consumption of alcohol varies considerably across cultures. I was merely attempting to ensure that the way in which parents treat their children should apply just as much as when they are in their temporary home as when they are in their permanent home.

Amendment negatived; clause passed.

Clauses 101 to 106 passed.

Clause 107.

The Hon. A.J. REDFORD: I invite the Attorney to respond to the issues I raised in relation to clauses 105 and 106 during my second reading contribution.

The Hon. K.T. GRIFFIN: Clause 105 mirrors the existing section 113 of the Act with the exception that the clause now specifies that the licensing authority must be satisfied that the grant is unlikely to give undue offence to neighbours. The licensing authority has always had regard to this in granting entertainment consents and has imposed conditions on consents to satisfy this requirement. In that sense, nothing will change under this Bill.

The honourable member asked how the licensee is expected to show that entertainment will not give undue offence and what the Liquor Licensing Commissioner will do in circumstances where premises have, over a period of time, provided live entertainment and local residents seek to prevent the continuation of the provision of entertainment by such licensed premises. The Bill is again no different from the Act in this regard. At present, if residents are disturbed by live entertainment they may lodge a complaint with the licensing authority and the Commissioner must attempt to conciliate the complaint. If he cannot, he must refer the matter to the court for determination. This process has continued in this Bill. Again, it is a question of each case being determined on its merits, and both the Commissioner and the court are experienced in this area. I understand that the majority of complaints are settled by conciliation and I expect that this will continue.

The Hon. Angus Redford further asked: will the Liquor Licensing Commissioner set out guidelines in relation to how he will deal with applications under this clause to minimise difficulties; and, is the Liquor Licensing Commissioner prepared to consult not only with the industry and local government but also with the South Australian Music Industry Association in establishing such guidelines? I recollect that I answered those questions at the time of my reply at the second reading stage, but I can now confirm that my understanding is that the Commissioner does not intend to issue guidelines because it would be impossible to provide for every type of application, bearing in mind that entertainment applications may range from a request for unamplified music in a restaurant to a large-scale entertainment complex.

Clearly, the Commissioner will have regard to a range of factors, including construction and location. In general terms the Commissioner will have regard to the Building Code of Australia and the Environment Protection Act. Depending upon the type of entertainment facility, the Commissioner may require the applicant to provide a certificate from a qualified architect attesting to the building's capacity to contain noise. The Commissioner intends to adopt the same strategy as he has for gaming applications, and that is to physically inspect the premises. The Commissioner will then, in consultation with the applicant, advise on what information he will require on these issues.

The Commissioner does not intend to consult with local government but, before determining any such application, the Commissioner will be required to be satisfied that all approvals, consents or exemptions have been obtained. The Commissioner will consult and liaise with the South Australian Music Industry Association and any other industry/organisation on any aspect of the administration of the Act, including the determination of entertainment consents.

The honourable member then asked a range of questions about what sorts of issues and guidelines might the Commissioner have in mind, such as noise levels, crowd numbers, and so on. Again, this is a case of each matter being determined on its merits. However, the Commissioner has set, and will continue to set, noise levels as a condition on a licence in appropriate cases. In doing so, the Commissioner relies on advice from the Environment Protection Authority and any submissions made by the applicant, for example, acoustic consultants' reports. The Commissioner will always exercise discretion but is guided by the following:

- crowd numbers—Building Code of Australia;
- alcohol types—submissions made by the applicant and other parties, in particular the police;
- age groups—the Commissioner may either impose conditions restricting access by minors or even limiting a function to minors only, but again this would be done in conjunction with the applicant, the police and other interested bodies such as Youth SA. I stress that the Commissioner holds extensive consultation before imposing conditions on a licence or granting a licence where issues such as public safety or safety of minors are involved. There seems to be an underlying suggestion that young people are being denied the opportunity to attend live entertainment because of restrictions imposed by the licensing authority. Let me assure members that this is not the case. The Commissioner has developed an excellent code of conduct for under-age venues in conjunction with police, Youth SA, promoters, young entrepreneurs and the security industry. He has also issued comprehensive guidelines for raves, dance parties and similar events, again developed through extensive consultation with promoters and young people. The Commissioner has worked closely with the industry to ensure that young people have the opportunity to attend live entertainment; for example, he has recently agreed to the suspension of the licence of a major entertainment complex on two nights during the school holidays to allow for an under-age venue expected to attract up to 1 500 young people.
- security—in conjunction with the police;
- toilets—Building Code of Australia;
- fire safety—Building Code of Australia, in conjunction with the Metropolitan Fire Service and the police;
- car parking—the Development Act in conjunction with the police and local council.

In determining any of these issues, the Commissioner will of course have regard to submissions made by the applicant and any intervener or objector.

In relation to music, the Commissioner will not be issuing guidelines. Again, each case will be determined on its merits. In relation to entertainment, consents are granted in respect of premises and, unless sought for a finite period, attach to the licence indefinitely. Entertainment consent would be removed only through disciplinary action or as a result of the determination of a complaint. I think that deals with the matters raised by the honourable member.

In relation to the matters raised on clause 106, clause 106(4) provides that the Commissioner must endeavour to resolve the subject matter of the complaint by conciliation. The whole thrust of the provision is conciliation and the Commissioner will impose conditions that reflect the progress of the settlement. The honourable member has raised the fact that the clause does allow for the Commissioner to make an interim order before the conciliation proceedings. The Commissioner has advised that he cannot envisage any

complaint where an interim order would be made before the conciliation commenced. If the subject of the complaint is a major public safety or community issue, the Commissioner would simply bring the conciliation on for early determination.

The Commissioner adopts a range of aids to assist in determining noise and behaviour complaints. Clause 106 of the Bill gives a council the right to lodge a complaint. The council will not have a superior right more than any other objector. The Commissioner will invariably inspect the licensed premises and surrounding area, most often late on the nights of the alleged disturbance to try to gauge first hand the extent of the problem. The Commissioner will often seek the assistance of the Environment Protection Authority and the police and will also give the licensee the opportunity to engage an acoustic consultant to either update an independent assessment or to work with the EPA. The Commissioner may seek a report from liquor licensing inspectors.

The majority of noise and behaviour complaints are, in the view of the Commissioner, well founded. Generally, residents do put up with tremendous noise and inconvenience before lodging a complaint with him. Most residents wish to avoid the trouble and time of attending complaint hearings, and it is usually as a last resort that complaints are lodged. Most noise complaints are lodged on behalf of many residents and, in the Commissioner's opinion, it is rare for the complaint to be either frivolous or vexatious.

The Commissioner accepts that at times the relationship between the key residents' representative and the licensee is such that some trivial matters are identified, but these are dealt with accordingly. The Commissioner has advised that the only time he has exercised the discretion under clause 106(2) has been where there simply are not 10 residents living in the vicinity of the licensed premises (this has happened twice), or where in his opinion a resident is genuinely representing residents who are unable or unwilling to be represented. He has exercised this discretion in a complaint relating to behaviour in a retirement village where he was satisfied that the elderly people were being distressed but were in this case fearful of complaining. It must be remembered that any person aggrieved by the Commissioner's decision may seek a review. As is the case with all matters in the liquor licensing jurisdiction, there is a system of checks and balances to ensure that parties are treated fairly. The Commissioner has imposed and will continue to impose conditions specifying maximum decibel readings in conjunction with the parties. I repeat that the Commissioner relies on the Environment Protection Authority for expert advice in this field and is guided by the EPA on issues such as the most appropriate location for readings to be taken. I think that deals with all the issues.

The Hon. ANNE LEVY: I move:

Page 53, line 18—Leave out paragraph (b).

This section of the legislation refers to the employment of minors. It has long been held that minors cannot consume liquor on licensed premises, nor can they sell, supply or serve liquor on licensed premises. Traditionally, for many years an exception has existed in the Act which does not prevent a minor being involved in selling, supplying or serving liquor if the minor is a child of the licensee or a manager of the licensed premises, presumably on the basis that the parents are there to supervise their children, although I gather there is now a view that parents should not be responsible for their children in this area. However, I do not wish to touch that section at all. It is traditional that children of licensees are permitted to be involved. It may sometimes be abused, with the involvement of very young children, but that is not the point I wish to make at the moment.

The Bill before us inserts a new provision which allows 16 and 17 year olds to be involved in selling, supplying or serving liquor if they are undertaking a prescribed course of instruction or training, and this I most strongly oppose. As I mentioned in my second reading speech, it would be all too easy for virtually every licensed premise in the State to set up some course of instruction or training or to say they were doing so and consequently employ 16 and 17 year olds to serve liquor instead of employing adults as they must do now. From the point of view of the licensee this would obviously be cheaper, because it is a condition in the liquor industry that anyone who serves liquor, whether they be 18, 19 or 20, gets the same wages as someone who is 21. There are no junior rates, but in the award that does not apply to 16 and 17 year olds, so that employing these young people would lead to exploitation. It is not creating jobs at all: 16 and 17 year olds would replace older people and when they reached 18 they would be sacked and more 16 and 17 year olds would be brought in. It would be all too easy to abuse this provision.

We must look very seriously at another aspect of this. The whole thrust of this legislation is to have responsible drinking, and responsible supervision of drinking. Managers will have to be identified or identifiable. The penalties for serving under-age people and those who are intoxicated have increased considerably, and it would just not be fair to give that responsibility to 16 and 17 year olds. They are not old enough themselves to drink in public; how can they possibly be given the responsibility of judging when someone is too intoxicated to have further drinks? It would not be fair to put that responsibility on people of that age, particularly given that if they make a mistake they will be up for a $5 000 penalty. Serving liquor is a responsible matter; it is not something to be treated lightly. It is not the same as selling socks or being at a supermarket checkout. It requires mature judgment on the part of those who are selling in determining whether people are of age or intoxicated. It is not fair to put that responsibility on a 16 or 17 year old, particularly when the penalties for their slipping up can be so great. The penalties do not lie solely with the manager: they also lie with the individual, and a $5 000 penalty can be imposed if someone under-age is served. It is not fair to give these responsibilities to a 16 year old when such penalties hang over them.

I understand that the argument from the Government may well be that such an exemption is required for certain TAFE courses. Provision for an exemption in that form is not contained in the current legislation, and I am told that TAFE colleges have no problem whatsoever with the law as it stands. Sixteen and 17 year olds can undertake many courses in the hospitality and tourism industries that do not involve serving liquor. Serving liquor involves only a small section of the available courses in tourism and hospitality. Furthermore, in courses of this nature, most TAFE colleges do not serve liquor but coloured lolly water, and that is what they practise with. The only exception might be beer, because it is hard to get a head on lolly water. However, they are not selling the beer for money. It is clearly part of training, and there is not the commercial aspect which applies in licensed premises. There is certainly not the requirement on these students to make the judgment as to whether someone is intoxicated or whether someone is under age.

I maintain that the current situation is causing no problems at all in training for the hospitality and tourism industries, and it does not permit 16 and 17 year olds to be involved in selling liquor. I strongly oppose persons who are not allowed to drink themselves being able to sell liquor and being expected to exercise considerable judgment as they do so. I urge all members to oppose clause 107(2)(b).

The Hon. T. CROTHERS: I support the amendment with good reasons. I understand what the Attorney is endeavouring to do. If that were taken in a fresh context, people could not much argue with the addition of 'a person undertaking a prescribed course of instruction or training' to section 115 of the current Act. I do not know what is meant by 'prescribed'. I do not know who has done the prescription.

The Hon. K.T. Griffin: It is in the regulations.

The Hon. T. CROTHERS: I don't know; you can tell me. One thing I know is that, if you go to the industrial inspectorate, they will tell you that by far and away the people who are most guilty most often of cheating on wages are those of the cafe and restaurant society in South Australia and in every other State of Australia. I understand from friends in New Zealand, who are in the liquor trade union there, that it was the same there as well, and the United States is notorious for the same practice. I have no doubt that, with the good intentions of the Attorney and his adviser—and I will come to that—that the problem is that it will really give us a problem, because it will be abused.

If one wants to lift the standard of the industry to allow what one might experience in places that are regarded as the doyens of the industry such as Switzerland, Austria or Germany, one of the things the industry has to do is train more people as waiters and waitresses, to make it a trade. If it were the case that you were going to, either now or in the near future, employ apprentice waiters and waitresses to dispense drinks, there would be a case for having that in the current catchment area of your proposed addition to section 115. The problem we have is this: the age of majority in this State is 18. Many learned barristers in the Government benches will no doubt correct me—and I can see three of them—but the Acts Interpretation Act is something that bothers me slightly.

Whilst it is true, as I understand from legal advice I have sought, that where two Acts appear to be in conflict, it is generally the last Act Parliament promulgates that gets the nod, I am told that is not always the case necessarily. If this underage person serves a minor in the heat and trauma of a Saturday night at, say, the Arkaba or St Pauls or one of those places that are so crowded that you can hardly breathe let alone serve, who is responsible for that offence? Is it the under-age person who has not reached his or her age of majority under the laws and governance of this State, or is it the licensee for not exercising due diligence in his or her supervision of the minor in question?

Unfortunately, I think you have opened up a Pandora's box. I know that your intentions are principled and honourable and I can see the necessity for what you are trying to do, but in my humble view—and I am not a barrister by any means—the way in which you drafted that clause has opened up a Pandora's box in terms of the ramifications that flow from the additional provision that you seek to add to clause 115. I can well understand why the provision is there, but I think it could be drafted much better. In my time as an assistant union secretary and an organiser I have uncovered many instances where young people are so abused and ripped off in terms of their wages that they just lose interest in work.

I know what you are trying to do: you are trying to make provision for the training of people under hands-on conditions. Unfortunately, I think that your amendment creates more warts than it cures. The Attorney should have another look at that clause so that it is crafted and drafted in such a way as to catch that which it is trying to catch. I know of some restaurants where six or seven trainees are used because they provide cheap labour and maximise profits. If you want 16 and 17-year-olds in the industry you do not want that sort of situation; you want them to make a career out of it. For years I have seen apprentice cooks in some hotels who were virtually only steak jockeys, until the Liquor Trades Union and the AHA—I might say led by the Liquor Trades Union—created a joint apprenticeship scheme whereby we each had to put up $17 000.

We were in the van when that was created—and I think we are still party to that with the AHA—and that provided that the four-year apprentice would rotate around different hotels and get a greater breadth of experience. That was how we approached this matter. I can understand that if waiters or waitresses have a declared vocation that must lift the standard of the industry, particularly in the eyes of overseas tourists; but you will not do that by passing this amendment in the terms in which it is presently drafted. I ask the Attorney to go back to the drawing board on this. We understand what he is doing, and the principle is good; but the wording is damnable in respect of that which it opens up. That is my humble view.

The Hon. K.T. GRIFFIN: This is not about exploitation of young people. It is a proposal presented—

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: No, it will not. This is proposed in good faith in an endeavour to recognise that in this State we have a developing tourism and hospitality industry with a great deal more emphasis placed not only in the TAFE system but in other areas of education on training young people to work in the hospitality industry. The fact is that if the Hon. Anne Levy has a very strong objection in principle to having minors, that is, under 18-year-olds, serving alcohol, she might as well oppose also subclause (2), because the principle of subclause (2) applies not only to those who are seeking to be trained but also to the children of a licensee or manager.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: No. You apply the principle. You had a basic objection to this, and you might as well object to the whole of subclause (2). Let me tell you what is the position at the moment. Under the existing Liquor Licensing Act, a minor, being a child of the licensee or a manager, is allowed to sell, supply or serve liquor on licensed premises. There is no restriction. Minors of any age—12-year-olds—can be allowed to serve in the bar.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: Of course they do, but the fact remains that the principle is the same.

Members interjecting:

The Hon. K.T. GRIFFIN: The Liquor Licensing Commissioner has never received a complaint about the existing provision in the Act. The Bill tightens that up because it puts a minimum age of 16 years on the service by a child of a manager of the licensed premises. That is a restriction. We were seeking to provide another category of minors, of or above the age of 16 years, undertaking a prescribed course of instruction or training. A prescribed course of training or instruction means one that is enacted by regulation, which comes before the Parliament and which can

be disallowed, but it is prescribed in the context of the regulations where we envisage that each course will be specifically considered; there will be conditions attaching, including conditions relating to supervision and duties. We propose genuinely to give young people job experience in a way that is strictly controlled. It will not be open slather, because the training institution will have to apply to have the course prescribed and, as I say, that will be done by regulation.

I do not believe that training institutions will abuse what we see as a valuable training opportunity. Some in the community will see it, as honourable members opposite seem to have seen it, as a provision to be abused, but in fact it will continue to disadvantage young students from gaining valuable experience on the job in a way that is detrimental to their interests. There are a couple of examples. Young people under the age of 18, whilst they serve food in a restaurant, cannot serve alcohol. If you go to Roseworthy College, kids who are under 18 are doing a course and are not able, whilst they are under 18, to undertake any job experience serving alcohol.

Willunga High School has an innovative oenology and hospitality course. It is a practical course where they make wine from the school's own grapes under the supervision of a recognised wine maker. That school, for example, may want to have its students participating in the service of alcohol and developing the skills. If you have someone who works in a winery, they cannot serve alcohol if they are under 18. Members opposite, through their shadow Attorney-General, Mr Atkinson, may decide to get on the Bob Francis Show and say, in horror, that we are exposing young people to risk, but they are capable of misrepresenting the position. The position is a genuine proposition to enable young people to gain experience under supervision, experience which they presently do not have. I reject the amendment.

The Hon. T. CROTHERS: I have to put my view on record because I have always had much respect for the Attorney-General and I always will have. He is generally a man of considerable substance in the eloquence with which he embraces and rebuts arguments, but that has not been so on this occasion.

The Hon. K.T. Griffin: It has.

The Hon. T. CROTHERS: It has not. I can get off the track too. It has not been so on this occasion. The fact is that the Opposition's Levy amendment does not do anything of the things that the Attorney-General says it does.

The Hon. K.T. Griffin: It does.

The Hon. T. CROTHERS: No, it does not, and let me put the reasons officially on the *Hansard* record. There is a natural inhibitor in respect of numeracy about a licensee's or manager's progeny who can work in a bar or in any part of a hotel or a club under 18 years of age. In the era of small families, where we are averaging 2.3 children per family—

The Hon. Anne Levy: 1.9.

The Hon. T. CROTHERS: It is only 1.9 children now. That is a natural inhibitor, but that is not the case with the Government's provision with respect to minors working in a bar. We have we have no problems with Roseworthy College and its oenology courses. We have no problems with the TAFE colleges at Light Square or Regency Park. Indeed, I have no problem with people of 16 or 17 being taken out into the field and having hands-on training, but that is not what will happen. I understand that is the intention of the Bill, but let me tell the Committee what will happen: that will be abused to hell.

The Attorney-General's measure does not state who prescribes the course. He spoke about the oenology and food courses at Willunga, and I understand that course was set up by the high school itself. Where did the prescription come from to set up that course? It might be embraced now, but I remember reading that it was an initiative taken by the teachers at Willunga. What does the Government mean by 'prescribed course'? It is no good the Attorney-General telling me that it will be prescribed by regulation. I want him to show me the prescription now as to what is a prescribed course. Do not talk around the edges of it. Do not tell me how it will be prescribed: tell me what is prescribed. Tell me the substance of the prescription now or do not use those arguments in rebuttal of the Levy amendment.

I have heard the Attorney-General address this question many times. I have no doubt that his intentions and those of his officers are honourable, and I support those intentions, but that will not be the effect of this measure. This will be abused rotten and, rather than encourage young people and create a career path for them to enter the industry and make a career out of it, they will become so disabused by some of the cheating charlatans who work in the industry in respect of paying proper rates of pay that they will have nothing but horror for that industry as a future career.

I beg the Attorney-General to go back to the drawing board and to give more careful drafting effect to the measure. Let the measure do precisely what the Government wants it to do, but do not leave the loose ends dangling so they can be abused. The Attorney-General is too honest a man to give such an opportunity.

There is many a legitimate licensee who does not abuse the system, who pays what he or she has to pay, and then there is the licensee next door who can undercut the legitimate licensee because he uses six to eight 16 year olds on a prescribed course. Instead of charging $5 or $6 for a meal, which might be the price if proper award rates were paid, he can charge $3 for a meal.

The Attorney-General's measure strikes against the *bona fide* licensee and, because of the age of majority, it strikes against the fellow who serves minors. An additional onus is put on the licensee because it is unclear who is responsible for the fact that these young people are beating the licensing legislation. Is it their parents? At 16? Is it the licensee or the licensed premises?

The Hon. Anne Levy: Under the Act it is them.

The Hon. T. CROTHERS: That is right, but under another Act they do not reach the age of majority until they turn 18 years, so their parents are still responsible. I understand what you are doing, Attorney. I am now making an appeal. I am not trying to score points. I will not go on the Bob Francis show. I will not go anywhere to score political points from this.

The Hon. L.H. Davis interjecting:

The Hon. T. CROTHERS: Well, he said he would. Shut your mouth, will you? I did not say I would stop abusing you: I will continue to do that with some pleasure. But I will not score cheap political points on this one. Once I am finished telling you here tonight, that will be the end of it. I am telling you now, as sure as God made little apples, this will be abused. Go back, redraft it, get it to do what you want it to do and let us have another look at it. There is no urgency. We can do the rest of the Bill and leave that one thing swinging until you do what you want to do. The principle that you are trying to embrace is correct, but the execution of the draft

leaves the door swinging open like the batwing doors of an old-fashioned western saloon.

The Hon. A.J. REDFORD: I support the amendment. We need to consider that there are quite significant changes coming through the pipeline in terms of delivery of training to young people. Whatever you might think of it, those decisions are being made in another place, that is, through the Federal Government. The traditional way of training people in this very important industry is, basically, through TAFE colleges. TAFE services will not be delivered in quite the same way as they were. I understand that the Federal Government will invite both the industry and unions to tender for the provision of training courses. I think that is why it is necessary to have the sort of provision that we have here.

I also would invite the Opposition to seriously consider that, in terms of training of young people in bars and in waiting courses, the entire range of training exists, to my knowledge, in the metropolitan area. There is an important role for us to offer employment opportunities and training to people outside metropolitan areas. The fact is that this will be—

The Hon. T. Crothers interjecting:

The Hon. A.J. REDFORD: I heard you in complete and utter silence for 20 minutes, so you give me the same opportunity.

The Hon. T. Crothers interjecting:

The CHAIRMAN: Order!

The Hon. A.J. REDFORD: The provision does state that it is to be prescribed and, therefore, can be disallowed by a motion of either House of Parliament.

The Hon. Anne Levy interjecting:

The Hon. A.J. REDFORD: Will the honourable member just shut up for a second.

The CHAIRMAN: Order! We do not need that, Angus; I will control them.

The Hon. A.J. REDFORD: It is regrettable that members of the Opposition think that, if a prescribed course is disallowed, then we will reintroduce it the next week.

The Hon. Anne Levy: You are doing it with everything else.

The Hon. A.J. REDFORD: Will the honourable member just quietly shut her mouth for a second and listen with a second ear.

The Hon. Anne Levy: No need to be abusive.

The Hon. A.J. REDFORD: Well, there is no need to interject with banal, similar and repetitious interjections. I am trying to make a legitimate point.

The CHAIRMAN: Order!

The Hon. A.J. REDFORD: The fact is that the sort of conduct that the honourable member complains about, of the Government sitting there and prescribing a course, then having it disallowed and represcribing it, is highly unlikely simply because the reality of the matter will be that people in those sorts of positions will be placed in a position of uncertainty. No-one will take up a prescribed course if, in fact, there is a risk that it will be disallowed on a repetitive basis. One would imagine that the Government would be appallingly stupid in the extreme if it prescribed a course and then commenced that course before the period for disallowance of the regulation might apply.

Whilst the objection might seem reasonable on the face of it, it seems to me to be one that no Government, no matter how unreasonable one might think that Government to be, would embark upon or risk. It also seems to me that there was a suggestion that employers in this area are cheating charlatans. One would have thought that if people are doing a prescribed course they are probably better able to protect themselves (because they will be in receipt of instructions and training in regard to their employee entitlements) than those who might be older and who have not received any training. A significant proportion of young people in this industry does not receive that training.

It seems to me that the Opposition is jumping at shadows here. There is a protection, because the course has to be prescribed, and it also seems to me that young people upon leaving school, who want to embark upon a prescribed training course and employment related to that prescribed training course, ought to be given that opportunity. There is sufficient protection within the legislation for parliamentary supervision of the nature of the course and the instruction.

The Hon. M.J. ELLIOTT: I note that the Government in its own amendment has, in relation to children of the licensee, increased the age to 16 where previously there was no limit. That to me seems to be an acknowledgment that there are problems with younger people being asked to serve, but a recognition also that a 16 year old who has probably lived in a pub most of his or her life, which is often the case, is pretty street smart in the ways of the world and likely to be able to make a reasonable judgment as to whether or not a person is intoxicated and some of the other judgments that some older, less experienced people might not be able to make. I would argue that the child of a licensee is clearly the exception.

We have not used the word 'drug' so far, but this Bill relates to the selling of what is a legal drug, and a drug that has potentially serious consequences. It is the reason why, in the objects of the Act, the first object talks about encouraging responsible attitudes, responsible service, consumption principles etc. It is a recognition that the way the drinks are sold and served etc. are all very important components of handling and selling a legal drug. Frankly, it is not a good thing to have young people selling alcohol, because of their inexperience. I do not think that there is any great loss if a person under the age of 18 is not in a position to do a training course and may not start doing a training course in the selling of this drug until the age of 18.

There is no suggestion that courses cannot be run: it is a question of the age at which people will start going into hotels and restaurants and start serving alcohol and being subject to some quite stringent laws—and laws that should be stringent. So, I support the amendment. I think that it is responsible and it is consistent with the Act as a whole. And it is consistent with the logic that the Government itself applied when it said that even the children of licensees should be 16 before they serve.

The Hon. ANNE LEVY: The Minister spoke of its being necessary to have training courses, with which I completely agree. There is nothing to say that these training courses must be undertaken at the age of 16 and 17. There are many aspects of the hospitality and tourism industries where training can be provided to 16 and 17 year olds that do not involve the serving of liquor. Waiting at tables is one example; cooking and working in the kitchens is another example. There is plenty of scope for training at that age in that industry if people wish it.

It seems to me to be totally anachronistic to say that people may not consume alcohol until they are 18 but under that age they can sell it, supply it, provide it to other people and have the maturity to judge when someone has had too much to drink and should not be served any more. I notice

that the Minister, in his defence of the legislation, did not answer my comments about the unfairness of giving such responsibility, with a severe penalty if they fail, to 16 and 17 year olds. He spoke of training and of being under supervision. The Bill does not say that that there will be supervision, and it is not irrelevant to talk about this Government's behaviour in re-gazetting regulations the day after they are disallowed by the Parliament. That has happened on several occasions, and it makes a complete mockery of the whole regulation system.

I am discussing the issue, not the person, when I say that this is irresponsible behaviour on the part of a Government, and surely the Government can then understand that people are reluctant to leave things to regulation, because Parliament does not have control of the regulations as promised under the Subordinate Legislation Act. It is totally anomalous to suggest that people at 16 are not mature enough to consume alcohol but are mature enough to judge when people have had too much to drink and should not be supplied with any further alcohol—and, furthermore, be liable for a substantial penalty if they fail. That, to me, is a nonsense in respect of our whole approach to the supply and consumption of alcohol in this State.

Amendment carried; clause as amended passed.

Clauses 108 and 109 passed.

Clause 110.

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

Page 55, after line 12—Insert—

(2A) It is a defence to a charge of an offence against subsection (1) or (2) to prove that—

(a) the licensee or some person acting on behalf of the licensee required the minor to produce evidence of age; and

(b) the minor made a false statement, or produced false evidence, in response to that requirement; and

(c) in consequence the defendant reasonably assumed that the minor was of or above the age of 18 years.

The amendment is proposed to be inserted in response to concerns raised by the liquor industry that, given the high fine for service of liquor to a minor, it would be reasonable to provide for a defence in cases where a licensee has made all the necessary checks but that the evidence of age produced by the minor was of a fraudulent nature. The Government has agreed that this concern is reasonable and, in place of the existing strict liability offence in the Bill, has proposed to insert a defence for the licensee in such cases of fraud.

The Hon. ANNE LEVY: I support the amendment.

The Hon. R.D. LAWSON: I believe that the amendment is flawed in the following respect—and I invite the Attorney's comment on this. Clause 110(1) provides that the offence might be committed by the licensee, the manager of the licensed premises or the person by whom the liquor is sold. Subclause (2) provides that a licensee who permits a minor to consume liquor is guilty of an offence. The defence to a charge is that:

(a) the licensee or some person acting on behalf of the licensee required the minor to produce evidence of age;

(b) the minor made a false statement, or produced false evidence; and

(c) in consequence the defendant reasonably assumed.

The defendant in these circumstances might be the person who actually served the liquor or it might be the licensee or the manager. How can the licensee or the manager ever make out such a defence, because in all likelihood the licensee or the manager may not have been present and would not have made any reasonable assumption about the age of the person?

It seems to me that in lieu of 'the defendant' it ought to read 'the person by whom the liquor was sold or supplied or who permitted the sale'. That is the form of the existing legislation (section 118). It seems to me that the defence in relation to the manager and the licensee will in most cases be illusory if they must prove that they reasonably assumed that the minor was of the age of 18 years.

The Hon. K.T. GRIFFIN: The honourable member has picked up a good technical point. I will seek leave to move my amendment in a slightly amended form and have Parliamentary Counsel look at it in the context of the whole Bill. If it needs further fine-tuning that can be done in the House of Assembly, and it can then be considered by report. I seek leave to amend my amendment as follows:

By deleting the word 'defendant' and substituting 'person who served a minor'.

I think that will overcome the difficulty but I will undertake to make sure that we have a good look at it before it is finally passed.

The Hon. Anne Levy: That only protects the person served.

The Hon. K.T. GRIFFIN: No, it doesn't; it is broader than that.

The Hon. R.D. LAWSON: It does not cover subclause (2), which refers to a person who permits consumption, which is quite another thing.

The Hon. K.T. GRIFFIN: It does, because if the person who served the minor reasonably assumed that the minor was of or above the age of 18 it provides a defence for the manager or the licensee who permitted it. I will have it checked.

Leave granted.

Amendment as amended carried; clause as amended passed.

Clause 111.

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

Page 55, line 33—Leave out 'an employee' and insert 'an agent or employee'.

This amendment is to include an agent or employee in this provision which permits the removal of a minor from the part of licensed premises which has been declared out of bounds to minors. An agent or employee has been included throughout the Bill in the definition of 'authorised person' to allow security staff employed under contract by the licensee also to exercise certain powers in the Bill.

Amendment carried; clause as amended passed.

Clause 112.

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

Page 56, lines 9 and 10—Leave out '(other than a dining room or other part of the licensed premises approved by the licensing authority)' and insert '(other than a dining room, a bedroom or some other part of the licensed premises approved by the licensing authority)'.

This amendment will allow a minor to be in a dining room or bedroom between the hours of midnight and 5 a.m. This will ensure that a child can access meal and accommodation areas without the licensed premises having to come before the licensing authority to have the accommodation areas approved.

Amendment carried.

The Hon. ANNE LEVY: I move:

Page 56, lines 25 and 26—Leave out subclause (6).

This amendment, which will remove subclause (6), follows on from my previous amendment.

The Hon. K.T. Griffin interjecting:

The Hon. ANNE LEVY: It certainly would have been necessary had the previous one remained. I also fear that it could be used to permit 16 and 17 year olds who are employed in a hotel with gaming facilities to enter the gaming areas. In relation to minors of a class exempted by the regulations, the regulations could state that the class of minors so exempted is those who are employed by the licensee and that they would be permitted to enter the gaming areas. While that may not be what is intended, it certainly could be used in that way, and this Parliament has decided that minors should not enter gaming areas of clubs and pubs, and we do not wish to have any part of the Liquor Licensing Act which could permit that through its application.

The Hon. K.T. GRIFFIN: With respect, it has nothing to do with gaming rooms. This does not override the gaming legislation. That remains clear and unequivocal. It is unrelated to the earlier issue in respect of which I lost the argument relating to employment of minors; it has nothing to do with them, either. This is designed to deal with those sorts of cases such as where a world famous band—I think it was called Silverchair—was engaged to play at Heaven nightclub. Silverchair's members are under 18, so they had to cut off the entertainment at midnight. This is designed specifically to meet those sorts of special circumstances where it would be appropriate to allow the band to play beyond midnight—

The Hon. T.G. Roberts: They just wanted to go home.

The Hon. K.T. GRIFFIN: They did not want to go home and the fans did not want them to go, either. However, the law required them to do so. I suppose one must expect that some members will see something sinister in this, but I can tell members genuinely that there is nothing sinister in it: it is designed to deal with that sort of situation.

The Hon. ANNE LEVY: I do not in any way doubt the Minister's intentions in putting such a section into his legislation. My concern is what abuse of it can be made by certain people. It can often occur that parts of Acts are enacted with the very best of intentions but can be abused by people and, in examining legislation, it is the role of this Parliament to ensure that we do not enact legislation that is capable of being abused.

The Hon. A.J. REDFORD: If this succeeds, what happens in the example of a university student aged 17—and there are plenty of those—who attends the uni bar after midnight on a Friday or Saturday night, or even during the week, when there might be some entertainment? Would that student be committing an offence by being on those premises?

The Hon. K.T. GRIFFIN: The student cannot be there after midnight.

The Hon. M.J. ELLIOTT: I am not sure that I can see how this could be abused, and that is a question the Hon. Anne Levy might like to address. The honourable member initially referred to the gaming machine areas but they are clearly and explicitly covered by another Act, so that is not a problem. I suggest to the Hon. Anne Levy that she might give some examples of how she thinks it might be abused because, as it stands, I cannot see a particular problem.

The Hon. ANNE LEVY: I certainly agree that it is less important now that the Council has decided that 16 and 17 year-olds are not permitted to sell, supply or serve liquor. This section could have been used in relation to those people, but I agree that, since the Council has made that decision, there is less potential for abuse here than I had detected when originally reading the legislation which contained the section that has now been omitted.

Amendment negatived; clause as amended passed.

Clauses 113 to 117 passed.

Clause 118.

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

Page 59, after line 13—Insert—
(f) a lessor of licensed premises.

This amendment will bring a lessor of licensed premises within the disciplinary jurisdiction of the licensing authority. The Australian Hotels Association has raised the matter of a landlord refusing to repair licensed premises such that it endangers the safety of patrons of the licensed premises, for example, an unsafe balcony in need of repair. At present, a landlord may refuse to undertake repair work even though it may be his or her obligation under the lease and, in these circumstances, the only course available to the licensing authority is to take disciplinary action against the licensee. It is unfair for the licensee to suffer financially through possible suspension of the licence when it is the landlord's responsibility.

Amendment carried; clause as amended passed.

Clause 119.

The Hon. ANNE LEVY: I move:

Page 59, after line 30—Insert:
(via) if a contravention or failure to comply with an industrial award or enterprise agreement has occurred;

This amendment inserts another item as a proper cause for disciplinary action by the Liquor Licensing Authority. I merely seek to reinsert what has been in the Act for many years. The Bill before us removes the provision that has been there for a long time that one of the causes of disciplinary action is where a contravention or failure to comply with an industrial award or enterprise agreement has occurred. Apart from that, clause 119 is identical to what is in the current legislation.

I am sure that the Attorney will say that, if there has been a breach of an award, action can be taken in the Industrial Court. However, action can be taken in the Industrial Court only against an employer and, if we look at the situation of topless waitressing, a clause in the award prohibits being topless as a condition of employment. In other words, it is contrary to the award. A number of hotels—luckily not many—have not employed people to be topless waitresses or topless bar servers themselves but have contracted to a different firm to supply topless waitresses or topless bar people.

The Hon. K.T. Griffin: Your amendment will not cover that.

The Hon. ANNE LEVY: Indeed it will. It is a clear breach of the industrial award, but action cannot be taken against the hotel licensee but only against the contractor who has contracted these people and employed them on behalf of the licensee. Restoring this subclause to clause 119 will mean that, if the licensee permits an industrial award to be broken, even though he technically is not the employer but obviously is knowingly allowing the award to be broken by having topless waitresses and topless barmaids, under the industrial legislation no action can be taken against him at all.

However, if this is restored as a cause for disciplinary action, the Licensing Commissioner can take action against the licensee for permitting the industrial award to be broken with his knowledge on his premises. The action in the Industrial Court cannot be taken against the licensee who is

not the employer of topless waitresses. Without this being put back into clause 119 as a cause for disciplinary action against a licensee, there will be absolutely nothing that anyone can do to stop an explosion of topless waitresses and topless bar people around the State. We have argued this on previous occasions.

I am not being prudish in suggesting that I disapprove of topless waitresses. I am perfectly happy to have strip artists, if that is what people want, or people wearing no clothes at all, if that is what people wish, but it must not be regarded as a condition of employment. The employment of serving drinks or meals has nothing to do with going topless and should not be regarded as such. I fear very much that if we do not reinstall this section, which has existed for many years, this will be viewed as a licence for the numbers of topless waitresses and topless bar servers exploding around the State. We can fulminate as much as we like: nobody will be able to do anything about it.

The Hon. K.T. Griffin: You can't do it now.

The Hon. ANNE LEVY: Yes, you can.

The Hon. K.T. GRIFFIN: The honourable member is under a significant misapprehension. If devices are used to circumvent the award then you cannot at law allege and prove and hold liable an employer who is not the employer of the contractor; the award does not apply. It might apply to the licensee, but only in relation to employment. If what the honourable member calls a 'technical arrangement' applies, where someone else employs the topless waitress, the topless waitress comes onto the premises and the arrangement is between the licensee and the person who is providing the contracting service, it is not covered by the award. It does not matter how you like to draft it or turn it around; the employer cannot be got at. The honourable member must realise that in clause 43 of this Bill we are seeking to provide for the first time a direct means for the Liquor Licensing Commissioner to control these practices by imposing conditions on the licence. That provision does not exist at the moment. I am told by the Commissioner that, however much his office might try to deal with this issue, devices are adopted which mean that legally he cannot compel the licensee to comply; it is as simple as that. We are seeking not to use an industrial award, which on my advice and by the way I look at it is not broken by the employer engaging a contractor to provide a service.

So, we have a triangle: a licensee engages a contractor, where the contract is to provide topless waitresses. There might be an employment arrangement between the contractor and the topless waitress, but it does not bind the licensee. There is no way legally that we can deal with that situation unless we impose a condition on the licence, and that is what we are seeking to do. I acknowledge that it is inappropriate conduct and that it is inappropriate to require persons to provide services in this manner as a condition of employment, but we cannot deal with it as the law is at the moment or as the honourable member proposes to deal with it under industrial awards or enterprise agreements. If we are talking about enterprise agreements, there may be an enterprise agreement between the licensee and the licensee's staff but none between the licensee and the contractor or the contractor and the contractor's topless waitress who is engaged to provide services under contract to the licensee. I understand the issue, and we are genuinely trying to deal with it by a means which will have effect and not be an indirect means by which you cannot guarantee any satisfaction that you will achieve your objective.

The Hon. R.D. LAWSON: Is there not another reason for omitting what is now section 125 of the current Act, which provides that a course of disciplinary action exists if there has been a breach of an industrial award? Is that not the reason why many clubs, especially country clubs, have voluntary or part-time workers working behind the bar in circumstances where the trade would not justify paying award rates? That is technically creating the situation whereby cause for disciplinary action might exist. If I am right in that, is that not another reason why this provision ought not be there?

The Hon. K.T. GRIFFIN: Theoretically that is the position, and technically that is the position. The Commissioner does not know of any clubs that are using that device. There is one other aspect I would refer to; for example, restaurants are not bound by the award which deals specifically with topless waitresses. Even if this goes in, it will have no impact upon the restaurant industry in particular. The sort of approach I am seeking to take in clause 43 in imposing a condition on the licence cuts through all that technicality and places it firmly on the licence as a condition of the licence.

The Hon. M.J. ELLIOTT: In his response, the Attorney has now referred to clause 43 twice. Are we being led to believe that it is intended that there would be conditions on licences in relation to people serving drinks and food not being required to be topless or some other state of undress? Is that a clear intention or just a possibility?

The Hon. K.T. GRIFFIN: It is the intention, and it has already been done by both the Liquor Licensing Commissioner and the court by way of condition on the licence. So, it is the intention. It has already been done, and that should be evidence of what is likely to happen in the future.

The Hon. M.J. ELLIOTT: You say it has already been done, but a number of restaurants with topless waitresses are operating. If it has already been done, why are some restaurants and hotels already operating in that manner?

The Hon. K.T. GRIFFIN: Where there has been an application for an entertainment licence and it is believed that so-called adult entertainment is involved or is likely to be involved, there have been occasions where such entertainment has been prohibited. There are also venues where if it has been permitted there have been significant restrictions imposed upon it. However, in terms of restaurants where, for example, there has been an application for a transfer and it has been drawn to the Commissioner's attention that there are topless waitresses, in the instances where it has been relevant conditions have been imposed. I do not have all the details at my fingertips about the actual conditions that have been imposed. It was probably somewhat generous to say that all these conditions have been imposed in the context of preventing topless waitresses from being engaged at all, but where the issue has been drawn to the Commissioner's attention and therefore come to his notice he has taken action by agreement between the various parties, which includes the union. I am not aware of any that have been imposed by order without an agreement, unless the Commissioner has had to apply to the court and the court has imposed restrictions.

The Hon. M.J. Elliott: Has that happened?

The Hon. K.T. GRIFFIN: Yes.

The Hon. ANNE LEVY: I can assure the Minister that there are not only restaurants but hotels which currently have topless bar people. I am delighted if clause 43 is to be used to prevent 'topless' being a condition of employment, waiting or serving liquor. It seems to me that what happens in terms of entertainment is a different matter. If there are strip artists or dancers who dance in the nude it is not a matter that I wish

to prevent. That is what these people would be employed for—not that I wish to see it—but I am not in the business of censoring it. However, I am most strongly opposed to 'topless' being a requirement for the employment of people serving food or drink. That should not be a requirement for serving food or drink.

If the Commissioner intends to prevent that, I am absolutely delighted. I fail to see why this means that we have to remove what has been in the Act for a long time. It is another avenue of discipline against the licensee. There is no reason why we cannot have more than one. We do not have to put all our eggs in one basket, particularly as the people who wish to have topless people serving are often the sort of people who want to get around any provision that they possibly can and will look for any loopholes. Let us have several strings to our bow. The Hon. Robert Lawson raised the question of people who are volunteers in certain clubs. I do not think that comes into it at all. So far as I am aware, volunteers do not act under any award, agreement, enterprise agreement or industrial agreement: they are volunteers, and there is no question of having to get rid of this section because of the use of volunteers, because there is no award that applies there. Certainly, there are awards that are applied to casual employment. There is a great deal of casual employment in this industry, as I am sure we are all aware, and many is the university student who has undertaken casual employment to increase their meagre Austudy allowance under award conditions by working in the industry. But I cannot see that what the Hon. Robert Lawson has raised is in any way relevant to removing this provision, which has been there for a while. It may not be the most efficient means of stopping topless, but it is relevant and let us have more than one string to the bow and put an end to topless waitressing and topless bar serving in this State.

The Hon. M.J. ELLIOTT: I want to ask the Attorney-General whether or not the Liquor Licensing Commissioner has used section 125(1)(7) of the old Act in relation to breaches of industrial awards, enterprise agreements or industrial agreements; and, if not, I presume then that, so far as he has acted, he has acted under section 50 of the Act which relates to imposition of conditions.

The Hon. K.T. GRIFFIN: The Commissioner has taken one matter before the court. It was thrown out by the court because the judge decided that circumvention was not a breach of the award, and so since then the Commissioner has endeavoured to deal with it through the imposition of conditions.

The Hon. M.J. Elliott: By circumventions you mean the example given by the Hon. Anne Levy before?

The Hon. K.T. GRIFFIN: Yes, that sort of scenario. I can say that the Commissioner has requested the police in various regions to inform him of any licensed establishment which provides so-called adult entertainment.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: No; I was just about to go on to say that entertainment covers that very wide range, including topless waitresses.

The Hon. Anne Levy interjecting:

The Hon. K.T. GRIFFIN: It depends how you describe it. That is within the category of information to which the Commissioner has sought access through police on the basis that he believes it is an area that needs to be addressed. There may be revues or establishments which are peculiarly strip joints, or whatever. I do not find that particularly savoury but others might where it is not inappropriate in the whole context of the establishment for the Commissioner or the Licensing Court to allow topless waitressing, but that is a matter for judgment. I am not saying that it is appropriate or not.

The Hon. Anne Levy: It is highly inappropriate.

The Hon. K.T. GRIFFIN: That might be, but all I am trying to do is put into a context the genuine attempt of the Liquor Licensing Commissioner to deal appropriately with this behaviour. He has indicated and I have indicated the circumstances in which he believes and in which the Government believes that trying to impose conditions on licences is a much more appropriate way to deal with this issue.

The Hon. M.J. ELLIOTT: It seems apparent from what the Attorney-General has said that on one occasion an attempt was made to use the clause—which, effectively, the Hon. Anne Levy is seeking to reinsert in order to reflect what was in the old Act—for enforcement, but that that failed in that the contrivance was accepted by the courts, setting a precedent. That causes me concern because I support absolutely what the Hon. Anne Levy is trying to achieve, namely, that a condition of employment as a bar attendant or a waiter-waitress should not relate to one's state of dress. That is quite different from a person who is employed in the more honest capacity of stripper, dancer or exotic dancer. I would not like to see a proliferation of people who are looking for genuine waiting jobs, which are available, where the flavour is such that they are encouraged to take their gear off. We do not want to see that happening.

I have sympathy with what the Hon. Anne Levy is trying to achieve but I am not convinced at this stage that what she is seeking to reinsert will make any real difference, other than at least they are forced to go to contrivance and that probably makes it harder for a lot of people. I might even be convincing myself as I consider that. They are forced to go to contrivance and they have to bring in somebody else to act as an intermediary employer, and that would be sufficient discouragement for quite a few hotels and restaurants which otherwise might simply choose to say, 'Well, I want it.' Having posed the question, I think I have answered it, and at this stage I will support the amendment unless the Attorney-General can come up with some other mechanism which tackles this question head on. It might be better tackled head on rather than by a backdoor and not entirely satisfactory method, because it still allows contrivances to get around the intention.

The Hon. K.T. GRIFFIN: There is an additional difficulty in this amendment in that, to be able to make it succeed, employees must be prepared to stand up and give evidence, and that is very difficult to achieve. The union will say to the Commissioner that such a thing is happening, but it cannot be proved because the employees are too afraid to stand up and be counted. If the Commissioner has information which suggests that it is happening, he can seek to impose a condition on the licence. It is a much more direct and appropriate way of dealing with it and likely to be a more effective way than putting in this provision.

The Hon. ANNE LEVY: Under clause 43, which of the conditions set out—

The Hon. K.T. Griffin: The third.

The Hon. ANNE LEVY: No, it is not offensive behaviour. It is not offensive to be topless.

The Hon. K.T. GRIFFIN: They are examples: they are not the only conditions. Subclause (1) states that the licensing authority may impose licence conditions that the authority

considers appropriate. It covers a wide spectrum. These are just examples of it.

The Hon. ANNE LEVY: Why was not 'topless' put in as one of the examples if it is something that the Commissioner wishes to exclude by means of clause 43? I would have thought it should be flagged.

The Hon. K.T. GRIFFIN: The clause is very wide.

The Hon. ANNE LEVY: It is not unsafe or unhealthy to go topless.

The Hon. K.T. GRIFFIN: It is about welfare.

Amendment carried; clause as amended passed.

Clauses 120 to 129 passed.

Clause 130.

The Hon. ANNE LEVY: I notice that there has been a change from the current Act. Currently, it provides that a person who consumes liquor on or in a place within 200 metres of the premises is guilty of an offence. I wondered why that has been changed to being 'adjacent to the premises' as opposed to the previous limit of within 200 metres?

The Hon. K.T. GRIFFIN: Adjacent is in close proximity.

The Hon. ANNE LEVY: One wonders how it will be judged as to what is adjacent and what is not. I know that in my youth 200 yards, as it was in those days, used to lead to everyone leaving the dance hall and going 200 yards up the road to have a drink before they came back.

The Hon. K.T. GRIFFIN: From the Government's point of view, we thought adjacent—

The Hon. ANNE LEVY: If they go 50 metres away, will that be called adjacent or not? If it is not, is 25 metres adjacent? There must be a limit. There must be a dividing line between what is adjacent and what is not. I am not particularly fussed, but I wondered if this will lead to disputes as to what is adjacent and what is not as opposed to stepping out the old 200 yards.

The Hon. K.T. GRIFFIN: I would not have thought it would be a problem, but I will have the matter looked at before it is finalised in the House of Assembly.

Clause passed.

Clauses 131 to 137 passed.

Clause 138.

The Hon. R.D. LAWSON: Is it intended that the regulations will contain the same or similar exemptions as apply under the current regulations? I raise the question because, for example, the supply of complimentary liquor in the cottage and bed and breakfast industry in certain circumstances is excluded from the Act, as is the supply of liquor in relation to picnic basket, send a basket and similar-type arrangements. Recently it was brought to my attention that the tourist authorities are advising bed and breakfast operators that they should not offer complimentary bottles of liquor when advertising premises in the directories published by the tourist authorities. Upon looking at the existing regulations I could not see any justification for that stricture being placed upon advertising bed and breakfast accommodation.

The Hon. K.T. GRIFFIN: I cannot give an unqualified assurance that that will be the case, but there will be full consultation with all the relevant bodies that are affected, particularly if exemptions are to be amended. I understand that, in relation to the bed and breakfast industry, the peak body has already suggested that there should be some changes, and the Liquor Licensing Commissioner has undertaken to ensure that they are participants in the consultation process.

The Hon. L.H. DAVIS: I recollect this matter being debated some years ago when Minister Wiese was responsible for amendments to the legislation. In fact, I was responsible for achieving amendments to allow for exemptions for the bed and breakfast industry. I should declare an interest at this point in that my wife runs a bed and breakfast cottage. My recollection is that the recognition of the bed and breakfast industry was promised at that time. It was very slow to be put into effect, but my understanding is that that did occur. Like my colleague the Hon. Trevor Griffin, I cannot see any apparent reason why advertising would be banned.

Certainly, there was no indication in the debate at that time (some years ago) that that would be a problem. In fact, it is not uncommon in bed and breakfast advertising to mention a complimentary bottle of champagne or wine as part of a weekend package.

Clause passed.

Schedule.

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

Page 72—Add new clauses—

Continuation of other administrative acts, etc.

4. Any administrative, disciplinary or judicial act done under or for the purposes of the repealed Act remains in force for the purposes of the corresponding provisions of this Act.

Examples—

- A temporary licence in force under the repealed Act immediately before the commencement of this Act remains in force as a temporary licence under the corresponding provisions of this Act.
- A certificate granted under the repealed Act in relation to proposed premises remains in force as a certificate of approval under the corresponding provisions of this Act.
- An assessment of licence fee for a future licence period remains in force and a reassessment may be made under the provisions of this Act.
- An order barring a person from licensed premises remains in force as if made under the corresponding provision of this Act.

Requirements for notices

5. A notice that is required to be publicly exhibited within two months after the commencement of this Act is taken to comply with the requirements of this Act as to its form and dimensions if it complies with the requirements of the repealed Act as to the form and dimensions of a corresponding notice under the repealed Act.

The amendment expands the transitional provisions of the Bill to include any administrative, disciplinary or judicial act done under or for the purposes of the repealed Act. Examples of this include: a temporary licence granted under the repealed Act remaining in force; an assessment of licence fee for a future licence period remaining in force; and an order barring a person from licensed premises remaining in force.

Amendment carried; schedule as amended passed.

Title passed.

Bill read a third time and passed.

NATIONAL WINE CENTRE BILL

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

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That this Bill be now read a second time.

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

Leave granted.

This Bill provides the basis for the construction of a National Wine Centre at the site of the former Bus Depot on Hackney Road.

As all members are aware South Australia is rightly seen as the 'Wine State'—producing up to 60 per cent of the nation's wine output.

South Australia is the nation's largest wine producer. I also believe we produce the best wine.

We are acknowledged as the home of many of the nation's most prestigious labels and have a well deserved reputation for a product which has developed international standing.

As our wine reputation grows, so too does our capacity to export our product to Australian markets and to markets around the world.

The importance of this rapidly expanding industry to this State and the nation should not be under estimated.

The South Australian wine industry is now worth an estimated $900 million a year to the States economy—while the Australian wine industry currently exports $580 million worth of product annually. Over $350 million of these exports emanate from South Australia.

Given the importance of the industry as an economic generator it is vital that we as a Government do all in our power to foster its ongoing development well into the twenty-first century.

I am sure all members will agree the establishment of a National Wine Centre in Adelaide is long overdue. Without doubt South Australia is the nation's pre-eminent wine State and the logical location for what will become the icon for Australian wine tourism.

In order to cement our position as the nation's wine capital and to foster the industry's development and growth, we must also put in place those infrastructure projects which befit an industry with such impressive long-term prospects.

The South Australian Government has already shown its commitment to the project by providing $20 million to the Centre's construction.

Construction can start as soon as all approvals are in place. $7 million has been made available in the Budget for this year's construction works.

The Hackney site provides the ideal location for such a Centre—offering close proximity to the city centre and the cultural precinct of North Terrace.

Its proximity to the Botanic Gardens also offers the perfect fit for a Centre which will showcase the regional and varietal diversity of Australian wine. In developing the National Wine Centre it is the strong desire of the wine industry that the eventual facility reflects the natural ambience and rural nature of their industry.

This linkage can be further enhanced by the creation of a more open vista for the site.

The choice of Hackney follows an exhaustive selection process in which a number of sites throughout the city were considered.

Throughout this process both the State Government and the Australian wine industry were of the view that the chosen location must comply with an agreed set of criteria.

It was agreed that the National Wine Centre must be centrally located to ensure its commercial viability.

The selection criteria also stressed the need for ample space so that a surrounding vineyard could be incorporated into design specifications.

And importantly, it was felt that the Centre's location should not be aligned with any particular wine region. In fact this proved vital is establishing the support of the national wine industry.

Let me make it clear to the House, that based on these criteria, Hackney was the only location acceptable to the Australian wine industry—and given that this Centre will represent its interests, the Government took the view that the industry should have a key role in deciding the Centre's eventual location.

Hackney is the industry's choice!

Hackney is the Government's choice!

As great as this facility is for South Australia it is extremely important that the National Wine Centre is recognised as a national project.

The Centre will become the headquarters of the Australian wine industry and the international home of our burgeoning wine tourism industry.

We have taken the view that this Centre must be 'owned' by the entire wine industry and therefore must be representative of all the wine regions of Australia.

Consequently we have signed a Memorandum of Understanding with the Winemakers' Federation of Australia which reflects the support of both the Government and the national wine industry for the establishment of the Centre at Hackney.

At present, the site is under the care, control and management of the Board of the Botanic Gardens and State Herbarium. This Bill seeks to divest the site from their control and place it in the control of a body with the necessary powers to undertake the development established by the Act.

This Bill proposes to develop the National Wine Centre as a 'crown development' and therefore intends to facilitate the project by using Section 49 of the *Development Act 1993.*

Given the importance of this development to South Australia, the Bill seeks to grant the Centre a General Facilities License. In every other respect the *Liquor Licensing Act 1985* will apply.

This Bill seeks to confer the power to determine such issues as opening times, admission fees and parking fees by regulation.

The membership of the Board of the authority created by this Bill will be appointed by the Governor and nominated by the Minister following consultation with defined wine industry associations. These associations will be prescribed by regulation and are intended to be the peak wine industry bodies from the major wine producing States of Australia—South Australia, New South Wales, Victoria and Queensland and the peak national wine industry body, currently the Winemakers' Federation of Australia.

The Chairperson of the Board will be recommended by the nominated national wine industry association for appointment by the Governor following nomination by the Minister.

The remaining members of the Board will be nominated by the Minister, in consultation with the wine industry, and will possess skills, expertise and knowledge in fields considered relevant to the operation of the National Wine Centre.

As the first truly national wine centre in the world, the National Wine Centre will have a major impact on the South Australian tourism industry by playing an important role in reinforcing South Australia as the premier wine State and creating an impetus for new travel to the State. At the same time it will assist the Australian wine industry to increase both domestic and international wine consumption and in doing so promote the growth of one of Australia's key industry sector.

This national development is extremely important to this State and the support of every South Australian is sought to ensure the opportunity to stamp South Australia's name on the wine industry forever is not missed.

I commend this Bill to the House.

Explanation of Clauses

The provisions of the Bill are as follows:

Clause 1: Short title

Clause 2: Commencement

Clauses 1 and 2 are formal.

Clause 3: Interpretation

This clause sets out definitions of certain terms used in the Bill.

Clause 4: Incorporation of Centre

The *National Wine Centre* is established under this clause as a body corporate with the usual legal capacities. The Centre is to be an instrumentality of the Crown and hold its property on behalf of the Crown.

Clause 5: Land dedicated and placed under care, control and management of Centre

The area of land marked "A" on the plan set out in the Schedule is to be taken to be dedicated land under the *Crown Lands Act 1929* that has been dedicated for the purposes of the Centre and declared to be under the care, control and management of the Centre.

Clause 6: Development Act s. 49 to apply

This clause provides that section 49 of the *Development Act 1993* (relating to Crown development) will apply to proposals by the Centre to undertake development of the Centre's land (whether or not in partnership or joint venture with a person or body that is not a State agency).

Clause 7: Functions of Centre

This clause sets out the following as the functions of the Centre:

- to develop and provide for public enjoyment and education exhibits, working models, tastings, classes and other facilities and activities relating to wine, wine production and wine appreciation.
- to promote the qualities of the Australian wine industry and wine regions and the excellence of Australian wines.
- to encourage people to visit the wine regions of Australia and their vineyards and wineries and generally to promote tourism associated with the wine industry.
- to act as a headquarters of the Australian wine industry by providing accommodation and administrative support and facilities for wine industry bodies.
- to establish dining and refreshment facilities for visitors to the Centre.
- to carry out building, landscaping and other works to establish the facilities and amenities of the Centre.
- to conduct other operations prescribed by regulation or approved by the Minister.

The clause goes on to require that the Centre perform its functions in accordance with best commercial practices and, so far

as practicable, in co-ordination with wine industry and tourism industry programs and initiatives.

Clause 8: Powers of Centre

The Centre is to have all the powers of a natural person together with powers specifically conferred on it. The powers may be exercised within and outside the State.

Clause 9: Establishment of board

The Governor is empowered to establish a board as the governing authority of the Centre. The Governor may also dissolve such a board at any time. The establishment or dissolution of a board is to be notified in the *Gazette*.

Clause 10: Composition of board

A board established for the Centre is to consist of not less than 7 nor more than 13 members appointed by the Governor. The members are to be persons nominated by the Minister after consultation with a prescribed association representative of the national wine industry and prescribed associations for each of the States of South Australia, New South Wales, Victoria and Western Australia representative of the respective wine industries of those States.

Clause 11: Terms and conditions of appointment of members

This clause provides for 3 year terms of office and for the removal of persons from the board on any ground considered sufficient by the Governor.

Clause 12: Vacancies or defects in appointment of members

This is a standard clause ensuring the validity of board proceedings despite a vacancy in its membership or the subsequent discovery of a defect in the appointment of a member.

Clause 13: Remuneration

Members of the board are to be entitled to remuneration, allowances and expenses determined by the Governor.

Clause 14: Proceedings

This clause deals with the procedures at board meetings.

Clause 15: Disclosure of interest

This clause deals with conflicts of interest in relation to board members.

Clause 16: Members' duties of honesty, care and diligence

Members of the board are required at all times to act honestly in the performance of official functions and to exercise a reasonable degree of care and diligence in the performance of official functions. Dishonesty or culpable negligence in the performance of official functions will constitute an offence. Board members or former members are not to make improper use of official information or to make improper use of their official positions to gain a personal advantage or to cause detriment to the Centre or the State.

Clause 17: Immunity of members

A member of the board will not incur any civil liability for an honest act or omission in the performance or purported performance of functions or duties. However, this immunity will not extend to culpable negligence. A civil liability that would, but for this provision, attach to a member of the board will attach instead to the Crown.

Clause 18: Board subject to control and direction of Minister

A board established for the Centre will be subject to the control and direction of the Minister.

Clause 19: Minister to be governing authority if no board

If there is no board for the Centre the Minister is the governing authority of the Centre. Decisions of the Minister as the governing authority of the Centre will be decisions of the Centre.

Clause 20: Common seal and execution of documents

This clause deals with the use of the Centre's common seal and the execution of documents on behalf of the Centre.

Clause 21: Delegation

Provision is made for delegation by the governing authority.

Clause 22: Chief executive and staff

A chief executive of the Centre may be appointed by the Centre on terms and conditions determined by the Centre. A person holding or acting in the office of chief executive is, subject to the control and direction of the governing authority, to be responsible for managing the staff and resources of the Centre and giving effect to the policies and decisions of the governing authority. The Centre is empowered to employ staff on terms and conditions determined by the Centre or make use of the services of staff employed in the public or private sector.

Clause 23: Accounts and audit

This clause deals with the keeping and auditing of the Centre's accounts.

Clause 24: Annual report

An annual report is to be prepared on the Centre's operations and tabled in Parliament.

Clause 25: Sale of liquor

The Centre is to be taken to have been granted a general facility licence under the *Liquor Licensing Act 1985* authorising the sale of liquor at the Centre subject to conditions prescribed by regulation. The *Liquor Licensing Act 1985* will apply to such a licence once issued by the Liquor Licensing Commissioner.

Clause 26: Centre may conduct operations under other name

The Centre may conduct its operations or any part of its operations under the name *National Wine Centre* or some other name declared by the Minister by notice in the *Gazette*. *National Wine Centre* and any other name so declared will be official titles.

Clause 27: Declaration of logos and official titles

The Minister may, by notice in the *Gazette*, declare a logo to be a logo in respect of the Centre or a particular event or activity promoted by the Centre or declare a name or a title of an event or activity promoted by the Centre to be an official title.

Clause 28: Protection of proprietary interests of Centre

The Centre is to have a proprietary interest in all official insignia. The clause regulates the use of official insignia.

Clause 29: Seizure and forfeiture of goods

This clause provides for the seizure and forfeiture of commercial goods making unauthorised use of the official insignia.

Clause 30: Regulations

Clause 30 authorises the making of regulations.

The Hon. P. HOLLOWAY secured the adjournment of the debate.

LOCAL GOVERNMENT (MISCELLANEOUS) AMENDMENT BILL

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

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That this Bill be now read a second time.

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

Leave granted.

The comprehensive revision of the Local Government Act is progressing and it is the Government's wish to work with the Local Government Association and to reach substantial agreement on the proposals to be included in exposure draft Bills for the new Local Government Act prior to their release for public consultation.

The proposals contained in this Miscellaneous Amendment Bill need to be in place before the revision of the entire Local Government Act can be completed. In particular it is important to ensure that a process continues for achieving changes to the structure of Councils. The provisions which establish the Local Government Boundary Reform Board and the current process for dealing with proposals for the creation, abolition, amalgamation, and alterations to the boundaries, of Councils are due to expire at the end of September 1997. This Bill extends the operation of the Board and the current processes for 12 months to provide for the completion of proposals initiated before 30 September 1997 and for the management of further proposals for changes between 30 September 1997 and the enactment of the new Local Government Act.

The Government does not propose to continue the capacity of the Local Government Reform Board to initiate its own structural reform proposals after 30 September 1997. The Act was amended in 1995 to provide for a defined period of intense structural reform in Local Government and, to the credit of the Local Government sector and the Board, the significant results which the Government anticipated will be achieved within that timeframe.

The Government takes this opportunity to congratulate without reservation all those who have been involved in the process which has so far reduced the number of Councils in this State from 118 to 69 creating estimated benefits in the form of savings and improved services worth at least $20 million.

There are also other issues of concern to the Government and to Local Government which are of a high enough priority to warrant being addressed in this Bill. Increases in penalties for littering and enhanced enforcement arrangements together make up one of these, and clarification of the provision in the Act for limitation of Councils' general rates in the forthcoming two financial years is another.

In relation to littering, the proposed increase in penalties forms part of the multi-faceted approach of the State Government to litter

control and recycling. The approach is based on the results of the KESAB survey of 1992, the findings of the Litter and Container Deposit Legislation Working Party, and the Environment Protection Authority's *'Litter! It's your choice'* public discussion paper. The Government's strategy includes education and clean-up campaigns and container deposit legislation as well as increased litter penalties and expiation fees. The 1992 survey results, with unusually high returns from Local Government authorities, indicated that a majority of metropolitan councils thought the level of expiation fee for littering inadequate and considered the maximum penalty inadequate. Approximately one third of country councils were also dissatisfied with the levels of both.

The Government is also pleased to put forward a complementary proposal from the Local Government Association to enable Councils' authorised officers to ask persons suspected of littering to give some evidence of their identity as well as to state their name and address. This is consistent with the powers of authorised officers under comparable legislation and should strengthen the enforcement process.

In relation to the provision for limitation of rates in the financial years 1996-97 and 1997-98, the Government has received representations from the Local Government Association and certain Councils about the interpretation of the phrase 'same land' in section 174A. After extensive consultation a proposal has been developed for inclusion in this Bill clarifying that Councils may disregard revenue gained from certain growth in their rates base for the purpose of calculating the amount of general rates they may aim to recover in the next and following financial years. The proposal will allow Councils to gain increases in revenue associated with improvements in the value of property in their areas other than improvements solely in market value and home improvements. The effect of the amendment will be that where development growth occurs which potentially increases Councils' service costs, the revenue attributable to the growth will not be included in the maximum revenue permitted from general rates. I emphasise that the amendment is designed to help Councils in growth areas by allowing modest increases in revenue outside the rates cap where that is appropriate to local conditions.

The opportunity has also been taken to bring forward a number of necessary technical amendments.

It is proposed to exclude from the requirement to be laid before Parliament specific types of rules provided for in the Local Government Act which have not previously been laid before Parliament and which relate to the internal organisation of authorities, enable artificial legal entities to operate, and are not of a legislative character affecting the rights of individuals. The rules affected are amendments to the rules of the Local Government Association approved by the Minister, rules of the Local Government Association Mutual Liability Scheme and Local Government Workers Compensation Scheme, and rules of controlling authorities established by a single Council or by two or more Councils. Although the practice has been that these rules not be laid before Parliament they have not previously been specifically excluded from the operation of the *Subordinate Legislation Act 1978*. The proposed amendment will put their status in this respect beyond question.

The Local Government Superannuation Scheme has requested that it be enabled to bring into immediate effect an additional category of changes to its rules under section 73, such that amendments conferring a benefit or right on persons can enter into operation without delay. This is consistent with practice elsewhere in the superannuation industry and is included in the Bill.

A recent petition for Ministerial intervention in a dispute between Councils has drawn attention to the absence of provision for Councils who are parties to a dispute to meet the costs of such a resolution process. It is no longer appropriate for the State Government to meet such costs on behalf of Local Government and the Bill includes a provision to remedy this deficiency.

The Bill also includes technical amendments to replace references to a 'licensed valuer' employed or engaged by a Council with 'a valuer who is a member of the Australian Institute of Valuers and Land Economists' and to amend the period for objecting to a valuation made by a Council-employed valuer so that it is consistent with proposed amendments to the Valuation of Land Act concerning the period for objecting to valuations made by the Valuer General.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

The Act, other than the provision extending the period within which objections to valuations made by a council may be made, will come into operation on assent. The other provision will come into operation on a day to be fixed by proclamation in order to allow co-ordination with amendments being proposed to the *Valuation of Land Act 1971*.

Clause 3: Amendment of s. 21—Formulation of proposals by the Board

Another clause of this measure provides for the extension of the operation of Division X Part II of the Act until 30 September 1998. In conjunction with that extension, it is proposed that the Local Government Boundary Reform Board will not be able to formulate a structural reform proposal under section 21 of the Act after 30 September 1997. (This restriction will not affect a proposal or process commenced on or before 30 September 1997.)

Clause 4: Amendment of s. 22E—Protection from proceedings

This amendment rectifies an incorrect cross-reference.

Clause 5: Amendment of s. 22G—Expiry of Division

This clause provides for the extension of the operation of Division X Part II of the Act until 30 September 1998.

Clause 6: Amendment of s. 34—The Local Government Association of South Australia

Clause 7: Amendment of s. 34a—Local government indemnity schemes

It is possible to argue that various rules and constitutions that operate under the Act may be subject to the operation of the *Subordinate Legislation Act 1978*. In order to avoid any argument to this effect, the operation of that Act is to be expressly excluded.

Clause 8: Amendment of s. 73—Local Government Superannuation Scheme

Section 73 of the Act provides for the continuation of the *Local Government Superannuation Scheme*. The scheme may be amended by regulations made by the Local Government Superannuation Board. Section 10AA of the *Subordinate Legislation Act 1978* does not apply to these regulations, but section 73(3) provides that, as a general rule, amendments to the regulations come into operation four months after the day on which they are made (or at some later time). Some exceptions exist. It is intended to add an exception where an amendment confers a benefit or right on a person (other than the Local Government Superannuation Board).

Clause 9: Amendment of s. 83—Powers of authorised persons

Other clauses increase the penalties prescribed by the Act for offences relating to littering and abandoning vehicles. In connection with those moves to increase the effectiveness of those provisions, it is considered appropriate to enhance the powers of authorised persons to some degree. At the present time an authorised person may only require a person who is reasonably suspected of having committed an offence against the Act to state his or her full name and address. It is intended to extend the operation of the provision to include circumstances where the authorised person reasonably suspects that a person is committing, or is about to commit, an offence against the Act, and to allow the authorised person to require the production of evidence of the person's identity.

Clause 10: Amendment of s. 171—Valuation of land for the purposes of rating

Clause 11: Amendment of s. 172—Valuation of land

The term 'licensed' valuer is no longer appropriate. The appropriate reference is to a valuer who is a member of the Australian Institute of Valuers and Land Economists.

Clause 12: Amendment of s. 173—Objections to valuations made by council

It is intended to alter the time within which objections to valuations made by a valuer employed or engaged by a council may be made. The current rule under the Act is that an objection must be made to the council within 21 days after the objector receives notice of the relevant valuation (unless the council allows an extension of time). An objector will now have 60 days, or until 30 September, to lodge an objection, whichever is the later (unless the council allows an extension of time).

Clause 13: Amendment of s. 174A—Limitation on general rates—1997-1998 and 1998-1999 financial years

It is proposed to allow councils to disregard certain aspects of capital growth within their areas when applying the provisions of section 174A(1).

Clause 14: Insertion of s. 201

This clause proposes the insertion of a section that will expressly provide that the *Subordinate Legislation Act 1978* does not apply to the rules of a controlling authority under the Act.

Clause 15: Amendment of s. 721—Differences between councils

Section 721 of the Act establishes procedures for resolving differences between councils. It is intended to make provision relating to

the costs of the proceedings. In connection with this, an amendment will be made to require the Minister to consult with the relevant councils about the appointment of any person to conduct the proceedings before the appointment is made. The Government has also concluded that it is appropriate that a person be appointed to conduct the proceedings in all cases.

Clause 16: Amendment of s. 748a—Depositing of rubbish, etc.
This clause amends section 748a(1) of the Act to increase the maximum fine for depositing litter and other matter on a street, road or other public place to $4000 (currently this offence carries a maximum penalty of $500). The expiation fee is also increased to $200 (currently $50).

Clause 17: Amendment of s. 748b—Apparently abandoned vehicles and farm implements
This clause amends section 748b(1) of the Act to make the penalty for abandoning a vehicle or farm implement in a public place consistent with the penalty provided in relation to section 748a(1).

The Hon. R.R. ROBERTS secured the adjournment of the debate.

APPROPRIATION BILL

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

ADJOURNMENT

At 12.33 a.m. the Council adjourned until Wednesday 2 July at 2.15 p.m.