LEGISLATIVE COUNCIL

Thursday 25 May 2000

The PRESIDENT (Hon. J.C. Irwin) took the chair at 2.15 p.m. and read prayers.

PROSTITUTION

Petitions, signed by 72 and 15 residents of South Australia respectively concerning prostitution, and praying that this Council will strengthen the present law and ban all prostitution related advertising to enable police to suppress the prostitution trade more effectively, were presented by the Hons K.T. Griffin and R.R. Roberts.

Petitions received.

NATIVE TITLE

A petition signed by 464 residents of South Australia concerning native title rights of indigenous South Australians, and praying that this Council does not proceed with legislation that, first, undermines or impairs the native title rights of indigenous South Australians and, secondly, makes changes to native title unless there has been a genuine consultation process with all stakeholders, especially South Australia's indigenous community, was presented by the Hon. Sandra Kanck.

Petition received.

TAB AND LOTTERIES COMMISSION

A petition signed by 46 residents of South Australia concerning the Totalizator Agency Board and the Lotteries Commission of South Australia, and praying that this Council will ensure that the Totalizator Agency Board and the Lotteries Commission of South Australia remain government owned, was presented by the Hon. Caroline Schaefer.

Petition received.

PAPERS TABLED

The following papers were laid on the table:

By the Treasurer (Hon. R.I. Lucas)—

Reports—

Direction to Generation Lessor Corporation (GLC)—Execution of Sale Agreements—Optima Energy Pty. Ltd.—Ministerial Direction.

Direction to Generation Lessor Corporation (GLC)—Execution of Sale Agreements—Synergen Energy Pty. Ltd.—Ministerial Direction.

By the Minister for Disability Services (Hon. R.D. Lawson)—

Supported Residential Facilities Advisory Committee—Report.

RECONCILIATION WEEK

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I seek leave to table a ministerial statement issued today by the Hon. Dorothy Kotz on the subject of Reconciliation Week.

Leave granted.

QUESTION TIME

RESIDENTIAL TENANCIES TRIBUNAL

The Hon. R.R. ROBERTS: Mr President—

Members interjecting:

The Hon. R.R. ROBERTS: About time, too.

Members interjecting:

The PRESIDENT: Order!

Members interjecting:

The Hon. R.R. ROBERTS: Flattery will get you nowhere.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Roberts has the floor.

The Hon. R.R. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General a question about the Residential Tenancies Tribunal.

Leave granted.

The Hon. R.R. ROBERTS: On 4 August last year I asked a series of questions of the Attorney-General following inquiries from a constituent of mine in Port Pirie, Mr Rod Faulkner, who had had an unfortunate experience with a residential tenancies matter. He went to his local telephone directory and picked a number, which he duly rang—131 882—and as a result he ended up with a bill costed at $3.92—

The Hon. L.H. Davis: This will take the budget off the front page.

The Hon. R.R. ROBERTS: Why do you think I ask the question?

Members interjecting:

The Hon. R.R. ROBERTS: It was $3.92 per minute.

Members interjecting:

The Hon. R.R. ROBERTS: On that occasion—

The Hon. T.G. Cameron: How much was the bill—$3.92?

The Hon. R.R. ROBERTS: Per minute. It landed at $3.95 per minute. This came about because there is a private company listed in that section of the phone book and it leads people to believe that they are ringing the Residential Tenancies Tribunal, which as we all know is an arm of the department of consumer affairs under the purview of the Attorney-General. I asked the minister a series of questions in that respect, pointed out that there was a closing date for new registrations and asked him what programs he would come up with to advise constituents of the anomaly and save those country constituents substantial cost.

We had a follow-up on 14 January this year to the office of the Minister for Consumer Affairs and we were advised that it was in the Attorney-General's parliamentary bag.

Members interjecting:

The Hon. R.R. ROBERTS: Clearly, we should have asked the Hon. Diana Laidlaw, because she answers at least 60 per cent of her questions. Subsequently, on 31 March we were advised by the Attorney-General's department that the question had lapsed. My very serious questions are:

The Hon. K.T. Griffin: Was it a phone call or a letter that advised you of that?

The Hon. R.R. ROBERTS: My staff tell me that they were advised by staff from your office by telephone that the question had lapsed. I ask: what is a lapsed question? My serious question relates to people who live in country areas and who are still faced with the dilemma of being confused into making up calls to a private company costed at $3.95. I

again ask the Attorney-General: what does he intend to do to overcome this anomaly facing all constituents living in country areas, especially those in the 086 country area?

The Hon. T.G. Cameron: There has to be a trap here somewhere.

The Hon. K.T. GRIFFIN (Attorney-General): It is a tricky question. I am being particularly cautious in answering it. I will make appropriate inquiries and bring back a reply.

MOTOR VEHICLES, SAFETY

The Hon. G. WEATHERILL: I seek leave to make a brief explanation before asking the Minister for Transport a question about unstable motor vehicles.

Leave granted.

The Hon. G. WEATHERILL: Last Tuesday, on the early morning show on Channel 9, there was a report relating to large trucks on the roads in all states—not only in South Australia—and it indicated that they were unbalanced and that this was causing the drivers some concern. There have been numerous reports about this over the years, and I believe that it has been raised also in the federal parliament. In fact, the federal government employed a company which had 30 trucks of its own. I think it is strange that it did not engage a totally private company from that industry.

The truck drivers complained that the vehicles were unstable and, when they braked at different times, they veered either to the left or to the right, which was causing concern. They reported this problem and some of the vehicles were taken off the road. Even though they were owner drivers, the drivers refused to drive them because they were being cautious about road safety. Some of them have gone out of business because they cannot work and, therefore, they cannot afford to pay to have their vehicles repaired. My question is: will the minister talk to her counterparts—both federal and state—and ascertain why this company does not recall these vehicles and have them properly serviced? Most motor car industries in South Australia, when they find a fault in their vehicles, withdraw them from the road and repair them. This company is not doing that.

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): Last year the federal government, through the federal Minister for Transport, raised concerns about one brand of heavy vehicle in similar circumstances to those the honourable member has outlined. I do not know the outcome of those investigations but I will inquire. In addition, if the honourable member's concerns relate to that same investigation, I will provide him with a response from the federal government. If he has new information, or when he provides me with the name of the company, I will make inquiries at the federal level. I appreciate that he asked me to do so on a state by state basis but, in terms of vehicle specifications, it is a matter that is being dealt with nationally. I shall pursue the matter through the federal government.

EMERGENCY SERVICES LEVY

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Attorney-General a question regarding the recommendations of the Eiffe report.

Leave granted.

The Hon. CARMEL ZOLLO: Recommendation 5 of the Eiffe report states:

> It is recommended that the Department of Justice raise the issue of back-dating concessional payments with the Department of Treasury and Finance and provide advice to the Minister for Emergency Services as a component of budget advice for year 2000-2001.

My questions are:

1. Has the Attorney or his department undertaken negotiations with the Department of Treasury and Finance regarding the back-dating of concessional payments?

2. What is the estimated cost of backdating the concessional payments as per the recommendation?

The Hon. K.T. GRIFFIN (Attorney-General): I think the issue has been considered, but I will take the question on notice. In any event, I refer the honourable member to the budget papers which she will have soon after the Treasurer delivers the budget in the House of Assembly later this afternoon.

SENIORS GRANTS

The Hon. CAROLINE SCHAEFER: I seek leave to make a brief explanation before asking the Minister for the Ageing a question on seniors grants.

Leave granted.

The Hon. CAROLINE SCHAEFER: Yesterday's *Advertiser* had what I consider to be a relatively facetious article entitled 'Seniors share in handouts', in which it was pointed out that one seniors organisation was granted $100 to buy a mah-jong set. Further on in the article it was pointed out that $406 000 worth of grants had been sent out via the seniors program. As someone who comes from a small community, I know that sometimes quite small amounts of money can make quite a bit of difference to a community club and its operation. Much later in the article, it stated that the Booleroo Centre District Hospital and Health Services was granted $14 000 to assist older people. My question to the minister is: can he give details of further grants, in particular to voluntary groups, and especially in regional areas?

The Hon. R.D. LAWSON (Minister for Disability Services): I thank the honourable member for her question, and I do know the interest which the honourable member takes in community groups, especially in rural and regional South Australia. I certainly agree with the honourable member that the article, which appeared in yesterday's *Advertiser*, did in its presentation and headline trivialise what is, I believe, a very important program. The Grants for Seniors Program has been established for some years and this year we have made a record allocation—over $400 000 under the program—to many groups throughout the state.

The headline of the article to which the honourable member referred was 'Seniors share in handouts'. I do not regard these grants as handouts at all. They are a 'hand up' to community groups to support people who are themselves very often volunteers and to help older people in the community enjoy their citizenship to the full. As the honourable member says, it is amazing how much assistance can be provided with a small and well targeted grant. These grants are made in response to applications from groups throughout the state. It is the groups themselves that decide what they want to do and how they will spend the money.

The honourable member asks specifically about grants in country areas. I know from her interest in matters on Eyre Peninsula, even though she no longer resides there, that, for example, the Wudinna senior citizens group received $3 000 for a piano. Musical equipment provides entertainment, activity and pleasure not only to the people listening but also

to the people performing. That is typical of the sort of grant given. The Lameroo Day Centre, for example, has received a grant of $12 500 for the establishment of a shed and workshop. It is the case that many senior citizens groups have been largely patronised in the past by women, and it is good to see the establishment of sheds and workshops and the like because they provide a focus for older men—

The Hon. Diana Laidlaw: And clever women.

The Hon. R.D. LAWSON: —and of course clever women—to participate in the sorts of activities that appeal to people. The Southern Eyre Peninsula Family History Group is another group of elderly people that has been granted $1 000 for the purchase of a computer. Many of the grants that have been made are for computers and for assistance in ensuring that older people keep up with new technology. The Tumby Bay Senior Citizens Club received $950 for an airconditioner; and a leisure activity group in Clare, which is closer to the honourable member's place of residence, receives $500 for craft items and other activity items. Once again, craft activities are very important in many of these groups, as is sewing and other pursuits.

As I said, many of the groups are seeking to bring themselves up to modern standards with the purchase of computer equipment. I am delighted—but intrigued—to see that the Clarendon, Kangarilla and District Senior Citizens Club is to receive $500 for a white board. There are many diverse needs in the community and I am delighted that the government recognises not only the importance of the contribution that older people make to our community but also the importance of meeting their needs to ensure that they can live long and fruitful lives in the community.

JOINT SPIRIT

The Hon. SANDRA KANCK: I seek leave to make an explanation before asking the Minister for Transport questions about the alleged dumping of bilge water and sump oil by a freighter in South Australian waters.

Leave granted.

The Hon. SANDRA KANCK: Last night I was contacted by Rick Newlyn of the Maritime Union of Australia, who informed me that a Chinese national working as a crew member on the Panama-registered *Joint Spirit* had told him of the illegal dumping of bilge water and sump oil by the ship. Mr Newlyn told me that he had photographic evidence to back up those assertions. This morning I saw the photographs, and they provide very strong circumstantial evidence that the ship's plumbing had been tampered with to allow the illegal dumping of bilge waste.

Mr Newlyn told us that the crew member claimed that the illegal dumping of the bilge water and sump oil had occurred in South Australian waters. We were also told that the ship's owners were unscrupulously withholding a large percentage of the entire crew's wages. When the Maritime Union relayed the information regarding the possible pollution of South Australia waters to the EPA, the authority claimed that the matter was not within its jurisdiction.

On the face of it, at least, the matter falls under the jurisdiction of the Department of Transport by virtue of the Pollution of Waters by Oil and Noxious Substances Act. The ship is scheduled to depart Port Adelaide at four this afternoon, but the union will oppose its leaving the port. My questions are:

1. Will the minister direct the Department of Transport to begin an immediate investigation into these allegations?

2. What powers does the Department of Transport have to impound the *Joint Spirit* until the investigation is complete?

3. What protocols are in place for the transfer of information between the Australian Maritime Safety Authority and the Department of Transport regarding possible breaches of the law?

4. Has the EPA informed the Department of Transport of the notification it received yesterday regarding this matter?

5. Will the minister notify the appropriate federal authorities of the illegal withholding of the crew's wages?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I am not sure about the basis of the allegation in the last question, but I will see that the matter is followed up. I thank the honourable member for putting out a press release on this matter earlier today, which advised that she would be asking me a question on these specific allegations. I thank her for that, although I do not think I actually got a copy of the press release direct from the honourable member's office, but it has come to me anyway.

I can assure the honourable member that the EPA immediately informed Captain Walter Stuart, the Chair of the State Committee on the National Plan to Combat Pollution of the Sea by Oil, when it was alerted to this matter by Mr Darryl Grey of the Maritime Union of Australia at 1 o'clock yesterday. I am informed that Captain Stuart advised the EPA officer to contact the Australian Maritime Safety Authority and provide it with details. The EPA officer immediately did so and spoke with a Mr Peter Davey of the Australian Maritime Safety Authority. Apparently Mr Davey already had been informed by the MUA of this matter.

Mr Davey has since advised the EPA and Captain Stuart that the Australian Maritime Safety Authority has made arrangements to speak with the crew member at the Australian Maritime Safety Authority headquarters at Port Adelaide. I am advised that, if the AMSA believes that there are any issues with which the EPA ought to become involved, the EPA will be further advised, but it has received no such advice to this moment.

The officer from the EPA telephoned the maritime union shortly after 2 o'clock yesterday to advise it of the actions that had been taken by the EPA. Further to that, I will have to obtain advice for the honourable member about the protocols that are in place for dealing with such allegations. However, it would seem that all people involved have been correctly informed and have acted promptly in terms of taking up the matter with the crew member.

I was not alerted to the fact that the crew member had provided photographs to the MUA, but I trust that the MUA, if it is in receipt of them, as the honourable member suggests it is because she has seen them, will provide them to the representative of the Australian Maritime Safety Authority when it meets with the crew member. When question time is finished I will make further inquiries about the proposed meeting and powers in terms of impounding the vessel if it is proven that the allegations have substance.

MOTOR REGISTRATION LABELS

The Hon. J.S.L. DAWKINS: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning a question about motor registration labels.

Leave granted.

The Hon. J.S.L. DAWKINS: Recently I have been contacted by constituents who are concerned about the lack

of adhesiveness of motor registration labels. In fact, this struck a cord with me, because I have had a similar problem. It is even worse when you have more than one vehicle. It is something that is familiar to me and I know that other members in this place have had the same experience. Many labels are not sticking to car windscreens as they should and cause frustration and inconvenience for people who have to return the label (or what is left of it) and seek a replacement.

Can the minister explain why the manufacturer seems to be unable to produce labels that remain on windscreens as they should for 12 months? What is being done to rectify the problem?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): The honourable member and his constituent unfortunately are not alone in experiencing this problem, and for some time it has been trying in terms of the number of problems with the adhesiveness of the registration labels. The Registrar of Motor Vehicles over some considerable time has been working with the manufacturer to try to address the problem. I understand that it relates to the contamination of the adhesive by the ink used in the printing of the labels, and therefore with this contamination not all labels are able to be stuck fast for the three, six, nine or 12 months that the registration is applicable for.

The Registrar has informed me now that he has tired and has been frustrated in working with the manufacturer; it has not realised a successful outcome and therefore he has resolved that he will call for tenders from other manufacturers for the supply of registration labels. In fact, I understand that he has already taken that action. The selection criteria for the successful tender in the future will require the prospective bidders to submit packs of 1 000 registration labels. They will then undergo accelerated testing to ensure observance to Australian standards, and that includes adhesion for 12 months.

We do want to make sure that there is a reliable product in future and the Registrar will ensure that all bidders can, through various testing procedures, provide a reliable product for customers in the future. As I say, he has taken this course of action because, while seeking to work with the current manufacturer, it is obvious that there is a chemical process that cannot be fixed, and we would hope with any new manufacturer that this problem will not recur in the future.

MOTOR VEHICLES, SEAT BELTS

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Transport questions regarding motor vehicle seat belts.

Leave granted.

The Hon. T.G. CAMERON: I recently received a letter from a constituent concerned about discrimination against larger people with regard to seat belts in motor vehicles. Her concern is that many of the current seat belts in use in the rear seats of cars do not fit larger people.

The Hon. R.R. Roberts interjecting:

The Hon. T.G. CAMERON: I will not respond. I shall resist the temptation. My constituent's letter states—and it is not from the Hon. Ron Roberts:

> Dear Mr Cameron,
> I hope you can help me get an unsafe situation rectified.

Members interjecting:

The Hon. T.G. CAMERON: Members ought to take this question seriously because it is not a laughing matter. The letter continues:

> I am concerned that seat belts in the back seat never fit larger people. Not only am I, and many other people with above average weight, breaking the law every time I ride in the back seat of a car I am also vulnerable to on-the-spot fines by our police force. Whilst this is annoying and embarrassing, the likelihood of suffering extensive head and other internal injuries has been proved in many tests done over the years. It does not matter whether the seat belts are manual or retractable they are both too small. Both old and newer model cars suffer the same problem.
>
> I hope you can bring this situation to the attention of the appropriate person and persuade them to ensure that car manufacturers make seat belts the same length or greater than front seat belts for the back seats.

I am aware that there is a provision in the Motor Vehicles Act for disabled and very large people to be exempt from having to wear seat belts under certain criteria. However, they must see their GP and get a letter that they are then required to carry whenever they are in a motor vehicle. However, and this is the problem, the letter must be renewed every three months, which can be quite an inconvenience for people. In effect, this requirement is a form of discrimination against larger people. It would be far more appropriate if the current legislation covering the situation was amended or, even better, for car manufacturers to lengthen rear seat belts. My questions to the minister are:

1. Considering both the safety and discrimination implications, will she have her department examine the current legislation in relation to seat belts and larger people?

2. Will the government bring the deficiencies in length of rear seat belts to the attention of the motor vehicle building industry?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): In exploring this matter, I do not know whether the honourable member discovered that this is an issue just for the back seat. Are front seat belts longer?

The Hon. T.G. Cameron: They are usually adjustable and they are usually longer. Sometimes they are not long enough either, but it is mainly the back ones.

The Hon. DIANA LAIDLAW: It was an innocent question, because I did not know whether they were longer to accommodate all shapes and sizes. I do know, however, that this matter is determined by an Australian standard and, through Transport SA, I will have this matter explored by the Australian standards body. Vehicle manufacturers in this country work to those standards, so it is not just a matter of bringing it to the attention of motor vehicle manufacturers. If there is to be change, it will come in with a new standard. In the meantime, I will refer the honourable member's question concerning the provisions of the Motor Vehicles Act and the time frame of three months on a GP's letter and bring back a reply.

SOUTH AUSTRALIAN SOCCER FEDERATION

The Hon. J.F. STEFANI: I seek leave to make a brief explanation before asking the Treasurer a question about the South Australian Soccer Federation.

Leave granted.

The Hon. J.F. STEFANI: Yesterday in my matters of interest speech I raised a number of issues in relation to the arrangements between the South Australian Soccer Federation and the state government. In particular, I spoke about the breach of conditions by the federation in relation to the funding deed signed with the government and the substantial debt owed by the federation to the government. This debt represents a large amount of taxpayers' money not yet collected by the government.

On ABC television news last Tuesday evening, Mr Tony Farrugia, General Manager of the South Australian Soccer Federation, boasted about the opportunity to enter a second soccer team from South Australia in the national competition under the charter of the federation. On the evening of Friday 19 May, during the Adelaide City Force finals match played at Hindmarsh stadium, the South Australian Soccer Federation was said to be gloating about the assistance that the state government would be providing to the federation to field a second team in the national competition. Coincidentally, it has been reported that the South Australian Soccer Federation was delighted that the state government would be providing assistance through the Minister for Tourism to lodge a bid for the second licence in the national competition.

Given the federation's track record and its failure to meet many of the conditions of the funding deed or to pay the amounts due to the government as and when they fall due, my questions are:

1. Will the Treasurer advise what role the government intends to play through the Minister for Tourism in assisting the South Australian Soccer Federation to gain a licence for a second team in the national soccer competition?

2. Will the Treasurer advise what financial or other assistance is to be provided by the government to the federation in achieving this goal?

3. Given the failure of the federation to meet many contractual obligations under the funding deed, including the refusal to provide the government with a first mortgage over the original lease, will the Treasurer explain why the government would want to provide any assistance to the South Australian Soccer Federation?

The Hon. R.I. LUCAS (Treasurer): I am happy to take advice on those questions and bring back a reply as soon as I can.

EAST TIMOR

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Treasurer a question on the restructuring of East Timor.

Leave granted.

The Hon. T.G. ROBERTS: I am told that other states have moved quickly to make offers of assistance and to put together teams to assist East Timor with its restructuring, in particular housing, reticulated water, power and that sort of thing, so that East Timor's shattered economy and its social infrastructure can be rebuilt. My question to the Treasurer is: has the South Australian government set up any special teams or appointed individuals to work with the private or public sector, either nationally or at a local level, to network the opportunities that have been made available to become involved in this work in East Timor?

The Hon. R.I. LUCAS (Treasurer): I am happy to take advice on the honourable member's question and bring back a reply.

WOMEN'S AND CHILDREN'S HOSPITAL

The Hon. SANDRA KANCK: I seek leave to make a brief explanation before asking the Minister for Transport and Urban Planning, representing the Minister for Human Services, a question about the Women's and Children's Hospital.

Leave granted.

The Hon. SANDRA KANCK: On Monday, news broke that the Prime Minister's suite in parliament house requires new curtains, and these are to be provided at a cost of somewhere between $30 000 and $60 000. Other places in Australia require curtains more urgently, not least of all here at the Adelaide Women's and Children's Hospital. In this hospital at-risk babies are cared for in a number of units ranging down in criticality from the neo-nates through to the special care baby units 1 and 2. In that latter unit vulnerable babies who are premature and underweight are looked after. That unit can take up to 36 of these babies at one time.

The room in which the special care babies unit 2 is housed has a large plate glass window measuring approximately 7 metres by 2 metres and, as colder weather approaches, there is a large degree of heat loss through the window, resulting in lowered temperatures in a room where consistency of temperature is of importance to the health of these babies, many of whom have respiratory difficulties to begin with. I stress that these are not babies in heated humidicribs; most are in open bassinettes. Some are hooked up to oxygen or monitors that must be plugged into power points on the wall right next to the window.

Unfortunately the vertical blinds on that window have failed and can no longer be properly closed, so the temperature in the room can vacillate quite considerably. My inquiries indicate that these blinds failed some eight months ago and in trying to adapt to increasingly tighter budgets the hospital has put repair or replacement of these blinds at the bottom of the maintenance pile. Those who have visited the unit have noted that the repairing of flimsy blinds may not be sufficient to keep the room at the 22 degree temperature at which it should be maintained and that ideally the blinds should be replaced by heavy curtains that could act as a more adequate thermal barrier. My questions are:

1. Will the minister advise the Prime Minister that the people of South Australia regard his need for new curtains as being of lesser importance than the need for curtains in a unit for vulnerable babies at the Women's and Children's Hospital?

2. In light of the government's decision to downgrade birthing services at the Queen Elizabeth Hospital and thereby force more women from the western suburbs to give birth at the Women's and Children's Hospital, what extra money will the government provide to the Women's and Children's Hospital to allow at least adequate maintenance of existing facilities?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I have no intention of forwarding that advice to the Prime Minister. If the honourable member wishes to, I suggest that she do it herself. I have a strong view that the Prime Minister or head of state should be provided with a well maintained workplace where they receive overseas visitors and delegations. I do not know the size of the window or what material is being used, and I am not getting involved in the price. In terms of the offices, I believe that the Prime Minister and a head of state should not be seen working in areas that do not bring pride and respect to their country.

However, that issue is completely separate from the one that the honourable member has identified in terms of the Women's and Children's Hospital. I think the honourable member knows that, through family activities, I have always taken an interest in mothers' and babies' issues and the Women's and Children's Hospital, and I will take a personal interest in following up this matter.

ON-LINE GAMBLING

The Hon. NICK XENOPHON: My questions to the Attorney-General, representing the Minister for Government Enterprises, are as follows:

1. Has the TAB and/or the Lotteries Commission taken any steps whatsoever to develop internet gambling sites for their products? If so, what is the extent of such measures?

2. Has the Minister for Government Enterprises received Crown Law or other legal advice as to the legality of offering internet gambling products via the TAB and the Lotteries Commission to residents of South Australia and, also, to non-South Australian residents?

3. Will the minister confirm that any development of internet gambling sites for the Lotteries Commission and the TAB will not proceed further pending the outcome of the federal government's move to have a moratorium on internet gambling licences?

4. How much money has been spent to date on developing internet gambling sites for the TAB and the Lotteries Commission?

5. Does the Attorney or his department have a view concerning the legality of South Australians gambling on internet gambling sites in the absence of any specific South Australian statutory authorisation?

6. In particular, is it open for a person who has lost money on an internet gambling site in South Australia to seek to void that transaction, particularly in the case of a credit card transaction?

7. Has the Crown Law Office provided an opinion with respect to the legality of internet gambling?

The Hon. K.T. GRIFFIN (Attorney-General): I will have to take all the questions on notice and bring back replies.

EMERGENCY SERVICES LEVY

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Attorney-General a question about the emergency services levy.

Leave granted.

The Hon. CARMEL ZOLLO: My questions are as follows:

1. Can the Attorney-General confirm recommendation 17 of the Eiffe report which states:

> It is recommended that the state government:
> provides a concession on the emergency services levy to emergency services volunteers.

2. What is the cost of such a recommendation?

3. How long before the recommendation is implemented?

The Hon. K.T. GRIFFIN (Attorney-General): Quite obviously that is likely to be a very costly exercise—not just for the amount which might be payable but also for its administration. It will be a nightmare. Does it extend to whom is to determine who is a volunteer? Is it only volunteers in the emergency services area or all those volunteers right across the spectrum of activity in South Australia? I think it leaves a lot of indecision in relation to both the criteria and the application, so it would be particularly difficult to administer. I will ensure—

The Hon. T.G. Roberts interjecting:

The Hon. K.T. GRIFFIN: It raises philosophical questions as to whether volunteers ought to be remunerated in some way or another. That, I think, will open a Pandora's box and a significant debate. From what I hear from volunteers, they want to be volunteers: they do not want to be paid. Payment for their volunteer work would, in a sense, demean the volunteer activity. I will give further consideration to the question and bring back a reply.

MOTOR ACCIDENT COMMISSION COMMERCIAL

The Hon. T.G. CAMERON: I seek leave to make a brief explanation before asking the Minister for Transport a question regarding a recent Motor Accident Commission television commercial.

Leave granted.

The Hon. T.G. CAMERON: Recently, I viewed a television commercial which was attributed to Transport SA and the Motor Accident Commission. The advertisement is meant to demonstrate that, by reducing the speed of a motor vehicle by 10 km/h, the stopping distance when braking is also reduced. In the commercial a car stops at 60 km/h from a marker and, again, at 70 km/h from the same marker. The car at 70 km/h cannot stop in the available distance and slams into the rear of a stationary vehicle, while the car at 60 km/h stops in time. However, in both cases the braking cars are shown with wheels locked, hard along with the dramatics of noise and burning tyre smoke.

It is a technical fact that maximum braking efficiency occurs before the wheels of a car lock up, not afterwards. This advertisement may be teaching drivers an incorrect method to brake a vehicle in an emergency situation. If drivers follow the braking example displayed in the commercial, they will actually have less control of their vehicle, thus more rear end collisions could occur. My questions are:

1. I note that the commercial has been removed from television: what were the reasons for its withdrawal?

2. How much taxpayers' money in total was spent on the advertising campaign?

3. What action is the department taking to ensure that similar misinformation campaigns do not occur in the future?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I am glad that the honourable member noted the advertisement and I hope that he also received the message that speed does kill in various circumstances. We were trying through that advertisement to highlight the consequences of even small increases in speed in the metropolitan area in relation to safety for not only other road users but also the driver and any occupants of the vehicle.

The Hon. T.G. Cameron interjecting:

The Hon. DIANA LAIDLAW: No, wait a minute. I want to say that this is a highly important and relevant message for all those who have an interest in compulsory third party premiums and how to contain claims. The Motor Accident Commission has suggested that, if we could generally get people to drive at the maximum speed of 60 km/h and not 70 km/h, there could be a 20 per cent reduction in the number of claims. If that is so, and it is then reflected through premiums, that is a very sobering thought for us all.

In those circumstances, I think the advertisement was very effective. I do not understand all the technical points that the honourable member has related in this place but I will have them explored. I can indicate that all the advertisements that are undertaken as part of the government's road safety, public relations and education campaigns have a short time frame in which they are run to get maximum impact. They are then withdrawn and are generally run again. There is not a continuous showing of any one campaign. They will run

probably for about a month, be withdrawn, and then again be programmed at periods when we know there is the greatest road safety risk on our roads.

Those are public holidays, Christmas periods, Easter and such times. I have been given no advice to suggest that this advertisement to which the honourable member refers was treated in any way differently from the standard practice that the Motor Accident Commission and the Office for Road Safety apply with the placing of any road safety advertising campaign. However, I will obtain further advice on that for the honourable member.

MARINE DISCHARGE LICENCES

The Hon. R.R. ROBERTS: I seek leave to make an explanation before asking the Minister for Transport, representing the Minister for Environment and Heritage, a question about marine discharge licences.

Leave granted.

The Hon. R.R. ROBERTS: On 9 August last year I asked a series of questions of the then Minister for the Environment and Heritage, Hon. Dorothy Kotz, about a discharge licence granted to Torrens Island Power Station at a cost of $61 000 in January/February of 1995. I asked, in part:

2. Where did the $61 000 fee for that licence go and for what purposes?

3. What was the cost of the audit required by the licence?

4. What was the outcome of the monitoring required by the audit process?

I received a written reply from the Hon. Dorothy Kotz, who explained to me that I had inquired about the terms and conditions of the marine discharge licence granted to the Torrens Island Power Station in January/February 1995, and she advised me that that licence had been superseded by a new licence issued under the Environment Protection Act 1993, a copy of which was attached. At that stage I asked myself: why would she give me a copy of the licence that I did not ask for, and why not give me a copy of the first licence?

I am advised that the new licence—and one does not know its cost—is for 10 years, from 1 October 1998 to 31 December 2008. I read through the terms of the licence and was particularly interested in licence condition 212-2 in the 400 series of the licence, which states:

> An average weekly temperature rise of 10.5° centigrade during normal operating conditions, as described above, represents the maximum allowable thermal load which ensures compliance with the marine policy.

That is a 10.5 per cent increase, and I am not certain of the allowable figure for marine discharge for these high temperature waters. It continues:

> The Environment Protection Agency shall be advised forthwith of any exceedance of the criterion.

My first question to the minister is: how many times has that licence requirement been utilised? The other condition is 400-223, which provides:

> Where a change of circumstances occurs that will significantly impact on the implementation of the approved Environment Improvement Program(s), the licensee shall notify the Environment Protection Authority in writing within one month of the change occurring.

So, if a significant change occurs, one month later we have to notify. One can also question that. My second question to the minister is: how many times has there been notification under the requirements of section 400-223 of the Environment Protection Authority licence issued to Optima Energy on 1 October 1998?

Members would be aware that another power station is to be constructed, at Pelican Point. If, like me, members have been following this issue they would have noted a number of contributions, by ABC radio in particular, about the fact that it is now virtually accepted by the proponents of Pelican Point that they will exceed the temperature conditions of the discharge water of their licences.

Now that we are to have two establishments, Torrens Island and Pelican Point, I ask this question: if the Pelican Point Power Station gets a licence for marine discharge, which I understand it has to apply for, it will mean that two licences will be issued. Will there need to be a reassessment of the Optima Energy licence and the Pelican Point licence to take into account the combined effects of the discharge of high temperature waters into the marine environment around the Port Adelaide area? The other question I pose is: will the minister supply me with a copy of the 1995 to 1998 licence and explain why one licence was for three years and the new licence, bearing in mind that we have all these other complications, will be for 10 years?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I will refer the honourable member's series of questions to the minister and bring back a reply.

TEACHERS

In reply to **Hon. M.J. ELLIOTT** (26 October 1999).

The Hon. R.I. LUCAS: The Minister for Education and Children's Services has provided the following information:

1. At the commencement of the year 2000 school year there were five vacancies that were difficult to fill due to the subject area, subject combination or location. Four were filled by the end of the first week of school. The most difficult to fill was a music vacancy at Lameroo Regional Community School. Through negotiations between the placement officer and the principal, this vacancy has now been filled. There may be some difficulties experienced in filling short-term vacancies throughout the year. Whenever possible, short-term vacancies will be packaged together to build a longer term contract or recruitment position. Second term vacancies are currently being filled in both country and metropolitan areas.

2. 'Teachers Supply and Demand to 2004—updated Projections' dated November 1998 predicted a shortage of 104 primary school teachers and 216 secondary school teachers in South Australia in 2000. Clearly, in light of the above information on the 2000 staffing exercise, these predictions have not eventuated.

3. The current age profile of teachers does suggest that within the next five to ten years, significant numbers of teachers will be retiring from the workforce.

While there are 3000 teachers seeking permanent or contract employment, increased demand for teachers is anticipated in some senior secondary curriculum areas, some specialist primary areas and some geographic locations. The major secondary areas are mathematics; senior specialist science (e.g., physics, chemistry and agriculture); technical studies; home economics; Asian languages and special education.

Vacancies of less than one year will be the more difficult to fill, especially in country locations and in hard to staff metropolitan schools.

4. South Australia is leading the MCEETYA Taskforce on Teacher Preparation and Recruitment, which is developing a range of strategies aimed at encouraging people to take up teaching as a career.

Within this State, the Department of Education, Training and Employment is considering options identified in a review of country incentives programs aimed at encouraging teachers to go to country locations and to stay in these locations for longer periods of time. It has also implemented other initiatives to attract teachers to country locations, including school choice and recruitment to permanent positions filling short-term vacancies, and a project officer (recruitment and country teaching) provides a support program for teachers recruited to country locations.

The Department is also working with the three universities to develop appropriate strategies to address teacher supply and demand issues. This collaboration has led to the development of programs that provide relevant country perspectives for teacher graduates. A special program for potential Aboriginal and Anangu teachers has been particularly successful in recruiting teachers to these locations.

A program of retraining opportunities will further assist the department to better provide the workforce profile that reflects both current and future needs.

GOODS AND SERVICES TAX

In reply to **Hon. R.R. ROBERTS** (6 April).

The Hon. R.I. LUCAS: The Minister for Environment and Heritage has provided the following information:

The question concerns the impact of the GST on the container deposit scheme in South Australia.

This is a particularly effective scheme in contributing to the reduction of litter and promoting recycling in this State and I would not wish to see action by the Federal government threaten its viability.

I am aware that representatives of the recycling industry have raised their concerns about the impact of the GST with the Federal Government.

The GST Implementation Group of my department is working with industry representatives to assess the magnitude of the impact of the GST on the container deposit scheme.

On 4 April 2000 I wrote to the Federal Treasurer, the Hon. Peter Costello MP and Senator Robert Hill asserting that the container deposit scheme should be exempt from the GST.

MURRAY RIVER

In reply to **Hon. M.J. ELLIOTT** (4 April).

The Hon. R.I. LUCAS: The Minister for Water Resources has provided the following information:

The government has been very active in seeking to address the problems associated with the management of the State's water resources. As the competing pressures on the State's water resources have arisen, the government has taken an active role in determining the demands being placed on the resource, the capacity of the resource to meet those demands and environmental water requirements. The priority of the government is the preparation of fifteen water allocation plans for the State's prescribed water resources.

With respect to the Marne River catchment, on 6 May 1999 the former Minister for Environment and Heritage placed a Notice of Restriction on further water resource development, effective for a period of two years. The Department for Water Resources is undertaking further technical studies to determine the water budget of the catchment. It is anticipated that these studies will be completed by July 2000. Preliminary investigations highlight the fact that rainfall during the past decade has been below average, and this has in turn reduced the flow in the Marne River.

Upon the completion of these studies, the Department for Water Resources, in partnership with the River Murray Catchment Water Management Board, will undertake an extensive round of public consultation to determine the most appropriate management regime for the water resources of the Marne River catchment.

The ongoing problem of pollution, that is evident in the North Para River system, is currently being addressed through a catchment water management plan, which is being developed by the Northern Adelaide and Barossa Catchment Water Management Board in consultation with the community.

The plan provides a strategic framework for natural resource management, and incorporates a series of goals that will provide for the sustainable use of the catchment's water resources, as well as improving the health and vitality of the North Para system.

The Northern Adelaide and Barossa Catchment Water Management Board has already committed considerable resources to assist in rehabilitating the North Para system. In 1998-99 the Board allocated $230 000 to projects related to watercourse management in the North and South Para systems, and a further $200 000 has been allocated in the 1999-2000 program of works budget.

The initiatives include programs to:

- remove woody weeds and exotic trees;
- restore the river banks and channels where erosion has been a significant problem; and
- the voluntary fencing of watercourses to manage stock access.

KOSOVAR REFUGEES

In reply to **Hon. G. WEATHERILL** (21 October 1999).

The Hon. R.I. LUCAS: The Premier has provided the following information:

Upon this matter coming to my attention, my office contacted the Federal Department of Immigration and Multicultural Affairs to determine the details of Mrs Morina's situation.

Kosovars still in Australia at that time had been advised of the possibility of registering their interest in receiving a $3 000 Winter Reconstruction Allowance (WRA) if they returned to Kosova before the end of October, 1999. The last available charter flight out of Australia was due to leave on October 26. Therefore, for Kosovars in Adelaide to catch that flight they were required to leave by a bus to Melbourne organised by the Commonwealth Department of Immigration and Multicultural Affairs on Saturday, October 23, 1999.

DIMA advised that they asked all Kosovars then at the Hampstead safe haven whether they wished to return to Kosova with the WRA. Mrs Morina did not respond. In addition, a notice in Albanian about the WRA was available to Mrs Morina, was posted at the haven, and was included in the haven newsletter.

At that stage, those Kosovars that chose to stay in Australia could have remained until the end of November. However, by doing so, they forfeited the WRA. These visas were later extended until 8 April, 2000.

Those who believed they were unable to travel due to health problems were able to request a health check by a commonwealth official to determine their fitness. Mrs Morina was informed of this by DIMA, and underwent such a health check.

Subsequently, Mrs Morina was able to remain in Australia to give birth to her child. Despite the fact that I made several representations to the Federal Immigration Minister on behalf of all the remaining Kosovars, including the Morina family, in the days leading up to their departure, Mrs Morina left Australia on the morning of 9 April, 2000.

SCHOOL INTERNET ACCESS

In reply to **Hon. M.J. ELLIOTT** (19 November 1999).

The Hon. R.I. LUCAS: The Minister for Education and Children's Services has provided the following information:

1. Pricing arrangements for school internet access provided to the Department of Education, Training and Employment (DETE) by Telstra are 'commercial in confidence'. This is a standard procedure in commercial negotiations.

Nevertheless, for the purpose of comparison, the Premier has stated publicly that the cost per school will be about $6 000—much less than the $9 000 in Victoria and NSW, $11 000 in Queensland and $13 000 in Tasmania.

Currently, schools pay for Internet access and use from their own funds.

Under the new arrangement schools will only be charged for the internet materials that they access by downloading.

2. Principals have been advised of the cost per megabyte for the Internet materials which they download. The actual cost to schools will be determined by the extent of their use of the internet and associated services, therefore schools will need to budget and manage download costs.

Principals have also been advised that this information is 'commercial in confidence' and should not be released outside of the department. This information can be disclosed to school councils. Any information relating to school accounts is confidential and disclosure by school council members to third parties is unlawful.

3. Over 90 per cent of the total cost of sa.edu is being paid for centrally from the government's DECStech 2001 program and cost savings which will be achieved by the rollout of a high capacity network.

4. The opportunity to provide education-specific internet services to all public schools, in the best deal of its type in Australia, arose from the Request for Proposals for the Government Radio Network Contract (GRNC).

Telstra offered these services, called sa.edu, as part of industry development offerings in the GRNC. It is because of this relationship to the GRNC that Telstra was able to offer a service that is, without doubt, more cost-effective and of greater value to the State than could be obtained through a separate tender process.

Considerations of fairness and equity usually point to all potential providers being given an opportunity to compete, but these considerations must be secondary to getting the best deal for South

Australians. The State verified that the offer from Telstra was unequalled in Australia. Where the commercially best solution is only obtainable by another means, then it is appropriate to accept that best solution. In this case, South Australia's interests were clearly best served by accepting the Internet services offerings made as industry development proposals in the GRN project.

FOOD INDUSTRY

In reply to **Hon. P. HOLLOWAY** (4 April).

The Hon. R.I. LUCAS: The fall in R&D expenditure in South Australia is virtually the same as that experienced in Australia as a whole, i.e., 38 per cent.

No specific R&D employment data is available for South Australia; however SA might expect a decline similar to that of the national figure of 21 per cent.

The government recognises the importance of research and development in the processed food sector in South Australia and is naturally concerned about any fall in R&D expenditure and its potential impact on growth.

The State Food Plan, Food for the Future, specifically recognises the importance of technology, innovation and R&D as being critical factors in the development of the food sector in this state. Part of this initiative includes the formation of a Technology & Innovation Working Group, which is designed to stimulate activity and assist industry in this important area. The Working Group, chaired by an industry representative, is actively working to identify key areas of need and R&D resources that the industry could better utilise.

The Department of Industry and Trade, through The Business Centre, has a number of initiatives in place to promote and assist industry in R&D and related areas. The Department is also working closely with the Technology and Innovation Working Group.

Initiatives include:

1. Identifying appropriate 'global partners' to assist the South Australian food sector. This program is specifically designed to attract R&D activity to the state, which would not otherwise occur.
2. Identifying and assisting local providers of R&D to pro-actively assist the development of the sector in South Australia.
3. The Business Centre is also assisting industry to identify and access relevant R&D support programs and is working with some 16 companies on R&D related projects, including assistance with the preparation of funding proposals where appropriate.

The government believes that the targets for growth of the sector are achievable and is encouraged by the strong industry response to the Premier's Food for The Future initiative, and the recent positive feedback from companies who have participated in trade and other events both nationally and internationally.'

RALPH, Mr D.

In reply to **Hon. P. HOLLOWAY** (19 October 1999).

The Hon. R.I. LUCAS: The Minister for Education and Children's Services has provided the following information:

Professor Denis Ralph is a permanent public servant, employed under the provisions of the Government Management and Employment Act, 1985 and the Public Sector Management Act, 1995.

The Public Sector Management Act enables, but does not require, that a chief executive be entitled to some other specified appointment in the public service (a fall-back position) in the event that he or she is not reappointed at the end of the contract, or in other specified circumstances.

Whether or not a chief executive has a fall-back depends on a number of factors, most importantly whether he or she is a permanent public servant, and the specific nature of the contract negotiated between the chief executive, his or her minister, and the Premier.

Professor Ralph's contract provides for a fall-back position, in accordance with the Public Sector Management Act, 1995, and with his status as a permanent public servant. Mr Schilling's contract did not provide a fall-back entitlement.

The Public Sector Management Act, 1995 provides for termination of chief executive contracts prior to the contract end date, which can apply whether or not there is a fall-back right.

Notwithstanding provision for a fall-back position in his contract, the fall-back was not exercised. Professor Ralph's contract was not terminated, and as such he did not need to exercise any fall-back entitlement.

In January 1999, Professor Ralph was offered a newly created position as Director of the Centre for Lifelong Learning and Development in the Department of Premier and Cabinet. He accepted this new contract and voluntarily resigned as Chief Executive of the Department of Education, Training and Employment to take up the new appointment on 15 February 1999.

SMOKE-FREE DINING

The Hon. CARMEL ZOLLO: I seek leave to make a brief explanation before asking the Minister for Transport, representing the Minister for Human Services, a question about smoke-free dining.

Leave granted.

The Hon. CARMEL ZOLLO: In the lead-up to World No Tobacco Day on 31 May, I am reminded that smoke-free dining has existed in South Australia under section 47 of the Tobacco Products Regulation Act 1997 since 4 January last year. The dangers of smoking and passive smoking are well documented, and surveys have indicated that a majority of South Australians endorse this act.

The section provides for exemption from the prohibition of smoking to be granted for dining areas in some circumstances by application and payment of a $200 fee. According to the smoke-free dining project of the human services department, application for exemption can be made where licensed premises have an enclosed public dining or cafe area and the whole or part of this area is a bar or lounge area primarily and predominantly used for the consumption of alcoholic drinks rather than for meals. Under such circumstances, the bar or lounge area may be exempted.

The act also provides a maximum penalty of $200 or a $75 expiation fee for an individual smoking in breach of the act, as well as and up to a $1 000 penalty for the occupier of the enclosed dining area or cafe. My questions to the minister representing the Minister for Human Services are:

1. How many applications for exemptions have been made?

2. How many exemptions have been granted?

3. Have any expiations or other penalties been issued and, if so, how many?

4. What action has been taken to ensure compliance with the act?

The Hon. DIANA LAIDLAW (Minister for Transport and Urban Planning): I will refer the honourable member's questions to the minister and bring back a reply.

CORRECTIONAL SERVICES, STAFF SHORTAGES

The Hon. T.G. ROBERTS: I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister for Police and Correctional Services, a question about correctional services staff shortages.

Leave granted.

The Hon. T.G. ROBERTS: I understand that a section of the Adelaide Remand Centre has been shut and that remandees are being transferred to Yatala—something that I think members on both sides of the Council would condemn as being an unnecessary risk. I understand that the remandees are being placed in sections of Yatala gaol separate from the convicted inmates. My questions are:

1. Will the minister provide details of the operational status and future of units at the Adelaide Remand Centre?

2. Will the minister provide details of the number of remand prisoners at Yatala Labour Prison and their location and security in that prison?

The Hon. K.T. GRIFFIN (Attorney-General): I will need to refer that to my colleague in another place. I will do so and I will bring back a reply.

BUDGET PAPERS

The Hon. K.T. Griffin, for **the Hon. R.I. LUCAS (Treasurer):** I lay on the table the following papers:

2000-2001 Budget Paper No. 1—Budget Speech;
2000-2001 Budget at a Glance;
2000-2001 Budget Guide;
2000-2001 Budget Paper No. 2—Budget Statement;
2000-2001 Budget Paper No. 3—Estimates Statement;
2000-2001 Budget Paper No. 4—Portfolio Statements—Volume 1 and Volume 2;
2000-2001 Budget Paper No. 5—Capital Investment Statement;
2000-2001 Budget Paper No. 6—Employment Statement;
2000-2001 Budget Paper No. 7—Regional Statement;
Uniform Financial Information South Australia 2000-2001.

LIQUOR LICENSING (MISCELLANEOUS) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to amend the Liquor Licensing Act 1997. Read a first time.

The Hon. K.T. GRIFFIN: 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 makes miscellaneous amendments to the *Liquor Licensing Act 1997*. Most are minor amendments to improve enforcement or to overcome practical difficulties in the operation of the Act. There is also a substantive amendment in the form of a new type of liquor licence.

The 'direct sales' licence has been devised in response to the growth of electronic commerce. It will permit the sale of packaged liquor to a purchaser who does not attend the seller's premises but merely places an order, for example over the internet, for the delivery of liquor to a nominated address. Members may be aware that a number of websites already offer liquor sales facilities of this type. There is currently no South Australian licence which would permit such sales, other than as ancillary to conventional sales under an existing form of licence. This means that, at present, one cannot be licensed in South Australia to run a liquor sales business which trades entirely by means of the internet.

The new 'direct sales' licence will permit the licensee to arrange the delivery of packaged liquor to the home or other premises of a customer who orders the liquor by telephone, mail, facsimile transmission, internet, e-mail or like communication. This is the only type of sale permitted by the licence. Liquor may not be sold, displayed or served to customers in person.

As with other licences, the licensee must apply to the licensing authority, nominating the premises to be licensed, and must satisfy the authority that he or she is a 'fit and proper person' to hold a licence. The application must be advertised and there is an opportunity for objections on any of the grounds presently available under the Act. However, because the licence does not serve any particular locality, the 'need' criterion is not applicable. (Indeed, it may be that a significant proportion of sales under the licence will be sales to interstate or overseas purchasers.) While the order may be placed at any time of day, the dispatch and delivery of the liquor to any address within South Australia can only take place during the hours when it could be sold at a liquor store. Hence, the new licence cannot be used as a way around the existing restrictions on trading hours. It will, however, be possible to dispatch liquor interstate or overseas at any time.

To ensure that this licence is not used to sell liquor to minors, the bill adds a new offence of supplying liquor to a minor otherwise than on licensed premises. In addition, it is expected that the licensing authority will attach conditions to a direct sales licence for this purpose. Also, of course, these transactions will usually require the purchaser to give credit card details. Further, because of the delivery requirement, some time will usually elapse between the placing of the order and the arrival of the liquor at the address, making this a less attractive form of purchase, perhaps, to minors. It is not considered that this proposed new licence will pose any additional risk to minors.

Holders of current hotel, producer's, or wholesale or retail liquor merchant's licences will also be permitted to transact business by direct sales, as an automatic condition of these licences. This will also be possible for licensed clubs, if they can satisfy the authority that their members cannot, without great inconvenience, obtain supplies of packaged liquor. However, again, dispatch of liquor to any address within South Australia is to be limited to the times when the trader can presently supply liquor, so the new provision will not relax the applicable trading hours restrictions.

This new licence will mean that persons wishing to set up as liquor merchants using e-commerce only, without keeping a shop or hotel to which the public has recourse, may do so.

In addition, the bill makes a number of smaller, technical changes to the Act to improve its practical operation and to ensure that its provisions are not evaded.

The bill abolishes the concept of the 'manager' of licensed premises and instead uses only the concepts 'licensee' or 'responsible person'. This is because a 'manager' is really a sub-category of responsible person, and there is no need to distinguish between them. The same obligations as to proper supervision of the premises will apply to all responsible persons. This is a simplification of the current provisions, which will be welcomed by the hotel industry in particular, but which in no way relaxes the obligation to maintain licensed premises under proper supervision.

The bill clarifies the obligations in respect of entertainment venue licences and restaurant licences. It is not intended that restaurants be able to use their restaurant licences to trade, in effect, as entertainment venues. The bill makes clear that a restaurant licence requires the business to be conducted so that at all times, the main service provided at the premises is the supply of meals to the public. In the case of the entertainment venue licence, it is also made clear that the licence conditions can provide for the service of liquor for consumption by persons seated at a table or attending a function at which food is provided.

Further, to overcome a technical argument, it is made clear that a retail liquor merchant's licence authorises sales only on the licensed premises and not elsewhere. Similarly, in the case of a club which is permitted to sell liquor to members for consumption off the licensed premises, it is made clear that the sale (unless it is a direct sale) has to be on the licensed premises.

In the case of wholesale liquor licences, it is made clear that the limitation of retail sales to no more than 10 per cent of turnover does not limit export sales. This overcomes a technical argument that such sales, if they are not sales to liquor merchants, are limited in scope by this provision. The object of the provision was always to ensure that the wholesale licence could not be used to conduct a retail liquor merchant's business, for which the appropriate licence must be obtained, and not to restrict export sales.

To assist in law enforcement, it is made clear that in the case of a special circumstances licence, the venue at which the liquor is to be supplied (no matter where it is) counts as 'licensed premises' for the duration of the function. This covers the situation where, for example, the premises of a caterer are licensed, but the catered function at which liquor is supplied takes place at other premises. This will enable police and authorised persons to intervene under this Act, or police to intervene under the *Summary Offences Act*, should this become necessary, at the function venue. The object is to enable effective control of disorderly or offensive behaviour on the premises.

The bill also makes clear that if any person breaches a licence condition, knowing that this could render the licensee liable to a penalty, the person is also guilty of an offence.

Another measure designed to help control disorderly behaviour on licensed premises is an expansion of the licensee's power to bar a customer whose behaviour is unacceptable. At the moment, a licensee may bar a person for up to three months, for behaving in an

offensive or disorderly manner on licensed premises, or on other reasonable grounds. It will now be possible for a licensee to bar a customer for longer than 3 months, if the person is a repeat offender. If the person has been barred once before, the licensee will now be able to bar the person for up to 6 months, and if the person has been barred two or more times, he or she may be barred indefinitely, or for any period specified by the licensee. However, if the bar is for more than 6 months, or is indefinite, to be enforceable it must be promptly reported to the Commissioner. The barred person has a right of review. In reviewing the bar, the Commissioner can, in addition to the existing general powers to confirm, vary or revoke the order, also vary the bar so that it is reviewable on the completion of a behaviour management course or course of medical treatment, or like action to address the problem. In addition to the present grounds for barring, the bill permits a licensee to bar a person to protect that person's welfare, or the welfare of someone who resides with them.

In relation to disciplinary matters, the bill changes somewhat the present provisions for the Commissioner to obtain an undertaking from a licensee as an alternative to proceeding disciplinary action. It provides, as alternatives to such an undertaking, alteration of the conditions of a licence, or suspension or revocation of the licence, with the consent of the licensee. This is to address more fully the situation where the licensee does not dispute the alleged breach, and can agree with the Commissioner on an appropriate penalty. In such cases, there is no need for the matter to proceed to a Court hearing.

In addition to the above, in response to some community concern, the bill also provides for the licensing authority to take into account, when deciding whether to grant a licence, and in fixing the conditions to be imposed on a licence, the effect of the proposed licensed premises on the safety and welfare of children attending school in the vicinity. This will address concerns about the protection of children attending school or kindergarten in close proximity to licensed premises, be they hotels, clubs, entertainment venues or other premises. The authority is not bound to refuse a licence because of proximity to a school, but must consider the children's welfare and may refuse the licence, or attach any conditions necessary to protect the children.

Finally, the bill deals with the current difficulty posed by the provision, in s.59 and s.62, for the licensing authority to issue a 'certificate of approval' for premises which have not yet been built. The licensing authority requires full information about the proposed premises before deciding whether a certificate of approval, which paves the way for a liquor licence, ought to be granted, and until recently it had been the practice of the authority to require this. However, it has been held by the Supreme Court that the Act does not require the applicant to have obtained development approval before applying for a certificate.

This result is undesirable. It is intended that applicants obtain development approval before obtaining approval for a liquor licence, because any conditions which might be attached to development approval could be relevant in determining whether a liquor licence should be granted. For this reason, the bill amends sections 59 and 62 of the Act to make clear that, before a certificate of approval can be granted, the authority must be satisfied as to the matters as to which it is required to be satisfied in granting a licence, or in approving a removal of licence. These matters, set out in sections 57 and 60, include a requirement for any approval required under the law relating to planning.

I commend the bill to honourable members.

Explanation of Clauses

Clause 1: Short title

Clause 2: Commencement

These clauses are formal.

Clause 3: Amendment of s. 4—Interpretation

The clause inserts two new definitions required for the purposes of amendments made by later clauses.

'Direct sales transaction' is defined as a transaction for the sale of liquor in which—

- liquor is ordered by the purchaser by mail, telephone, facsimile transmission or internet or other electronic communication; and
- the liquor is delivered to the purchaser, or a person nominated by the purchaser, at the residence or place of business of the purchaser, or some place other than premises at which the liquor has been stored prior to delivery, nominated by the purchaser.

The term is used for the purposes of the proposed new direct sales licence (*see clauses 5 and 13*).

'Responsible person' for licensed premises is to mean a person who, in accordance with section 97, is responsible for supervising and managing the business conducted under the licence. The term is to encompass a licensee (that is, a natural person licensee) or a director of a corporate licensee or another person approved as a responsible person for the business conducted under the licence. Each such person must be a fit and proper person to supervise or manage, or be involved in the supervision or management of, the business and, for that purpose, must have knowledge, experience and skills that the licensing authority considers appropriate or undertake training specified by the licensing authority (*see* sections 55, 56, 71 and 97 of the principal Act). The concept of a 'responsible person' removes the need for approved managers in the current Act and a number of consequential amendments are required to reflect this change.

Clause 4: Amendment of s. 5—Lodgers

This amendment is consequential on the adoption of the concept of 'responsible persons' for licensed premises.

Clause 5: Amendment of s. 31—Authorised trading in liquor

Section 31 lists the different classes of licences under the Act. The clause adds direct sales licences to the list.

Clause 6: Amendment of s. 32—Hotel licence

Section 32 defines the liquor trading rights conferred by a hotel licence. The clause adds to these rights the right to sell liquor at any time through direct sales transactions (provided that if the liquor is to be delivered to an address in this State, the liquor may only be despatched and delivered during the trading hours otherwise allowed by the hotel licence for sale of liquor for consumption off the licensed premises).

Clause 7: Amendment of s. 34—Restaurant licence

Under section 34 it is currently a condition of a restaurant licence that the business conducted under the licence must consist primarily and predominantly of the regular supply of meals to the public. This condition is tightened so that it will in future be necessary that the business be so conducted under the licence that the supply of meals is at all times the primary and predominant service provided to the public at the licensed premises.

Clause 8: Amendment of s. 35—Entertainment venue licence

This clause adds to the current trading rights conferred by an entertainment venue licence the right, if the conditions of the licence so provide, to sell liquor on any day except Good Friday and Christmas Day for consumption on the licensed premises by persons seated at a table or attending a function at which food is provided (provided that extended trading is not authorised unless an extended trading authorisation is in force). This proposed further trading right corresponds to an existing right that may be conferred by a restaurant licence.

Clause 9: Amendment of s. 36—Club licence

The clause adds trading by direct sales transactions to the trading rights conferred by a club licence. Liquor may only be despatched and delivered under such transactions to addresses in this State between 8.00 a.m. and 9.00 p.m. and not on Good Friday or Christmas Day.

Clause 10: Amendment of s. 37—Retail liquor merchant's licence

This clause makes an amendment relating to retail liquor merchant's licences that corresponds to the amendment made by clause 9 relating to club licences.

Clause 11: Amendment of s. 38—Wholesale liquor merchant's licence

This clause also makes a corresponding amendment relating to direct sales transactions under a wholesale liquor merchant's licence. The clause also amends the licence condition contained in section 38(2) requiring that at least 90 per cent of the licensee's turnover from liquor sales in each financial year (excluding sales to the licensee's employees) must be derived from sales to liquor merchants. The clause amends this provision so that sales for the delivery of liquor outside Australia are excluded from calculation of the percentage.

Clause 12: Amendment of s. 39—Producer's licence

The clause adjusts the wording of section 39(1)*(a)* so that it is clear that sales of the licensee's product must occur on the licensee's premises.

At present, under section 39(1)*(b)*, the holder of a producer's licence may, if the conditions of the licence so provide, sell the licensee's product at any time for consumption in a designated dining area with or ancillary to a meal. This provision is widened so that it will extend to sales of the licensee's product for consumption in a specified area subject to restrictions specified by the licensing authority.

The clause further widens the trading rights conferred by a producer's licence so that the licensee's product may be sold at any time through direct sales transactions.

Clause 13: Insertion of s. 39A—Direct sales licence

Proposed new section 39A defines the trading rights conferred by the proposed new direct sales licences. Such a licence will authorise the licensee to sell liquor at any time through direct sales transactions provided that, if the liquor is to be delivered to an address in this State, the liquor is despatched and delivered only between 8.00 a.m. and 9.00 p.m. and not on Good Friday or Christmas Day. It will be a condition of a direct sales licence that the licensee does not, as part of, or in connection with, the business authorised by the licence, invite or admit prospective purchasers of liquor to any premises at which liquor is displayed or stored for sale by the licensee.

Clause 14: Amendment of s. 40—Special circumstances licence

This clause amends section 40 so that the licensed premises of the holder of a special circumstances licence will be taken to include premises at which a function is being held at which the licensee is supplying liquor. Various enforcement provisions will, as a result, operate in relation to such premises.

Clause 15: Amendment of s. 42—Mandatory conditions

Under section 42(2)*(b)* it is presently a condition of a liquor licence that liquor that is not delivered to a purchaser personally at the licensed premises must be despatched to the purchaser from the licensed premises. This condition is amended so that it does not apply in relation to a direct sales licence.

Clause 16: Amendment of s. 43—Power of licensing authority to impose conditions

Section 43(1) authorises the imposition of licence conditions and sets out examples of various such conditions. The second example in the list refers to conditions that (amongst other things) minimise offence, annoyance, disturbance or inconvenience that might be caused by activities on licensed premises to persons who reside, work or worship in the vicinity of the licensed premises. This example is amended so that it also refers to minimising prejudice to the safety or welfare of children attending kindergarten, primary school or secondary school in the vicinity of licensed premises.

Clause 17: Amendment of s. 45—Compliance with licence conditions

Under section 45*(b)*, if a condition relating to the consumption of liquor is not complied with, the licensee and a person who consumed liquor knowing that to be contrary to the condition are each guilty of an offence. This paragraph is replaced with a more general provision to the effect that if there is any breach of a licence condition involving conduct of a person other than the licensee that the other person knows might render the licensee liable to a penalty, that other person is (in addition to the licensee) guilty of an offence.

Clause 18: Amendment of s. 57—Requirements for premises

Section 57(1) of the principal Act makes it a precondition to the grant of a licence that the applicant satisfy the licensing authority as to the adequacy of the standard of the premises or proposed premises and that the operation of the licence would be unlikely to result in undue offence, annoyance, disturbance or inconvenience to people who reside, work or worship in the vicinity of the premises. A further precondition is added by the clause that the licensing authority be satisfied that the operation of the licence would be unlikely to prejudice the safety or welfare of children attending kindergarten, primary school or secondary school in the vicinity of the premises. The clause also adds a provision that would allow the licensing authority, in the case of an application for a direct sales licence or limited licence, to dispense with a requirement of the section or the requirement to submit plans.

Clause 19: Amendment of s. 59—Certificate of approval for proposed premises

This clause makes a drafting amendment designed to clarify the intention of the current section 59(1) that, before a certificate of approval may be issued in respect of the plans for proposed premises for which a licence is sought, the licensing authority must be satisfied as to all the preconditions for the grant of a licence in respect of the premises.

Clause 20: Amendment of s. 60—Premises to which licence is to be removed

Section 60 sets out preconditions for the grant of an application for the removal of a licence to different premises that correspond to the preconditions for the grant of a licence set out in section 57. The clause makes amendments to section 60 that correspond to those made by clause 18 in relation to the grant of a licence.

Clause 21: Amendment of s. 61—Removal of hotel licence or retail liquor merchant's licence

This clause corrects an error in the wording of section 61(1) and is of a drafting nature only.

Clause 22: Amendment of s. 62—Certificate for proposed premises

This clause also makes an amendment relating to the process for removal of a licence that corresponds to the amendment made by an earlier clause (clause 19) in relation to the grant of a licence.

Clause 23: Amendment of s. 71—Approval of management and control

This clause is consequential on the adoption of the concept of 'responsible persons' for licensed premises and the amendments made by clause 25 to section 97 of the principal Act.

Clause 24: Amendment of s. 77—General right of objection

This clause adds to the permitted grounds for objection to an application that the grant of the application would be likely to result in prejudice to the safety or welfare of children attending kindergarten, primary school or secondary school in the vicinity of the premises or proposed premises to which the application relates.

Clause 25: Amendment of s. 97—Supervision and management of licensee's business

This clause amends section 97—

- to replace the current scheme for approved managers of licensed premises with the wider concept of 'responsible persons' for licensed premises who may be a licensee (if a natural person), a director of a corporate licensee or some other person approved by the licensing authority;
- to make it clear that a licensee or director must, in order to be a 'responsible person' personally supervising and managing the business at licensed premises, be a fit and proper person with appropriate knowledge, experience and skills or undergoing training specified by the licensing authority.

Clause 26: Amendment of s. 103—Restriction on consumption of liquor in, and taking liquor from, licensed premises

This clause is consequential on the adoption of the concept of 'responsible persons' for licensed premises.

Clause 27: Amendment of s. 106—Complaint about noise, etc., emanating from licensed premises

Under section 106, the Commissioner may make an interim order before or during conciliation proceedings on a complaint about noise or behaviour problems. The clause adds a provision making it clear that the interim order continues in force until a final order is made by the Commissioner or the Court on the complaint or until the earlier revocation of the order by the Commissioner or the Court.

Clause 28: Amendment of s. 107—Minors not to be employed to serve liquor in licensed premises

Clause 29: Amendment of s. 108—Liquor not to be sold or supplied to intoxicated persons

These clauses each make amendments consequential on the adoption of the concept of 'responsible persons' for licensed premises.

Clause 30: Amendment of s. 110—Sale of liquor to minors

Section 110(1) makes it an offence if liquor is sold or supplied to a minor on licensed premises. The clause amends this provision to make it clear that the sale or supply must be by or on behalf of the licensee. It should be noted in this regard that section 114(2) is a more general provision relating to the supply of liquor to minors.

The clause adds a further provision, designed for the new direct sales licences, making it an offence if a licensee sells or supplies liquor to a minor otherwise than on licensed premises.

Finally, the clause makes amendments consequential on the adoption of the concept of 'responsible persons' for licensed premises.

Clause 31: Amendment of s. 111—Areas of licensed premises may be declared out of bounds to minors

Clause 32: Amendment of s. 114—Offences by minors

Clause 33: Amendment of s. 116—Power to require minors to leave licensed premises

These clauses each make amendments consequential on the adoption of the concept of 'responsible persons' for licensed premises.

Clause 32 also makes a drafting correction in the recasted section 114(3).

Clause 34: Amendment of s. 119—Cause for disciplinary action

This clause is consequential on the proposed new section 119A (to be inserted by clause 35).

Clause 35: Insertion of s.119A—Commissioner's power to deal with disciplinary matter by consent

Proposed new section 119A would empower the Commissioner to take certain action against a person as an alternative to disciplinary action if the Commissioner is of the opinion that proper grounds exist for disciplinary action against the person and the person consents to the alternative action. The action may consist of obtaining an undertaking directed against continuation or repetition of the relevant

conduct, adding or altering licence conditions or suspending or revoking a licence or approval.

Clause 36: Amendment of s. 124—Power to refuse entry or remove persons guilty of offensive behaviour

This clause makes an amendment consequential on the adoption of the concept of 'responsible persons' for licensed premises.

Clause 37: Amendment of s. 125—Power to bar

This clause makes amendments consequential on the adoption of the concept 'responsible persons' for licensed premises.

Section 125 presently empowers the barring of disorderly persons from licensed premises for a period not exceeding 3 months. The clause substitutes a graduated scale:

- a maximum of 3 months for the first barring order
- a maximum of 6 months for the second barring order from the same premises
- an indefinite period or any specified period for the third or subsequent barring order from the same premises.

Under the clause, it will be a further ground for a barring order if the licensee or a responsible person for the licensed premises is satisfied that the welfare of the person, or of a person residing with the person, is seriously at risk as a result of the consumption of alcohol by the person. A barring order on this new ground may be for an indefinite period or any specified period.

A barring order for an indefinite period or a specified period exceeding 6 months will not be effective unless details of the grounds for the order are provided to the Commissioner within 7 days.

Clause 38: Amendment of s. 127—Power to remove person who is barred

This clause is consequential on the adoption of the concept of 'responsible persons' for licensed premises.

Clause 39: Amendment of s. 128—Commissioner may review order

Section 128 provides for the Commissioner to review a barring order on application by the person to whom the order applies.

The clause adds a provision requiring that the licensee of the premises concerned be given reasonable notice of the hearing of such an application and be allowed to appear at the hearing personally or by a representative.

The clause would also allow the Commissioner, on review of a barring order for an indefinite period or a period exceeding 6 months, to vary the order so that it continues in force until further order by the Commissioner, in the making of which the Commissioner will have regard to whether the person has undertaken a behaviour management course, obtained medical assistance or taken other action to address the problem. This power is in addition to the Commissioner's general power, on a review, to confirm, vary or revoke the barring order.

Clause 40: Amendment of s. 132—Penalties

Clause 41: Amendment of s. 135—Evidentiary provision

Clause 42: Amendment of s. 138—Regulations

These clauses each make amendments consequential on the adoption of the concept of 'responsible persons' for licensed premises. Clause 41, in addition, makes a drafting correction so that a reference to disciplinary proceedings against a licensee is widened to disciplinary proceedings under Part 8.

The Hon. P. HOLLOWAY secured the adjournment of the debate.

CONTROLLED SUBSTANCES (DRUG OFFENCE DIVERSION) AMENDMENT BILL

The Hon. K.T. GRIFFIN (Attorney-General) obtained leave and introduced a bill for an act to amend the Controlled Substances Act 1984.

The Hon. K.T. GRIFFIN: 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 Council of Australian Governments (COAG) meeting of April 9 1999 discussed a national approach to address a range of issues relating to the illicit use of drugs in Australia. A particular emphasis in strategic terms was a resolution that there should be partnership arrangements linking education, law enforcement, justice and health efforts to deal with illicit drug use, in particular those partnership principles articulated within the National Drug Strategic Framework 1998-99-2002-03. More specifically, it was agreed that these efforts should target individuals who have had little or no past contact with the criminal justice system in relation to drug offences and who are apprehended by police for use, possession or related offences dealing with small quantities of an illicit drug.

A significant component of the COAG agreement was the establishment of police drug diversion programs. The general approach is that diversion to education, assessment and treatment (and, as necessary, allied services) should be an option upon police apprehension of an individual for offences relating to the possession or use of minor amounts of illicit drugs. The approach will build upon collaborative relationships between police who apprehend and human service professionals who assess and treat. But the principal feature for present purposes is that the diversion program is to be police initiated.

As a result of the COAG initiative, South Australia is eligible to receive funding from the Commonwealth to develop a police diversion program for people using illicit drugs. The amounts involved are $670 000 for 99-00 once the diversion model has been approved by the Commonwealth, and thereafter $1.64m in 2000/01, $2.65m in 2001-02 and $4.2m in 2002-3. The total amount involved is therefore $9.2m over a four year period. However, as noted, the allocation of the funds is conditional on approval of the proposed scheme by the Commonwealth based on its performance against the agreed COAG principles.

A Project Director, seconded to SAPOL from DHS, has been advancing the development of the model with assistance from a Drug Officials Group consisting of representatives of the Department of Premier and Cabinet, the Department of Human Services, the Department of Justice, the Department of Education, Training and Employment and the State Division of Aboriginal Affairs. The Project Director, who is responsible to the Chief Executive's Coordinating Committee on Drugs and thence to the Cabinet Committee on Drugs, has developed a Proposal document for discussion with the Commonwealth which contains a number of options for progressing the matter.

In the course of the preparation of this document and the discussion of it, a problem emerged in relation to the implementation of initiatives because of the current structure of South Australian legislation. While the legislation governing the apprehensions and available dispositions for young offenders is sufficiently flexible and amenable to a police diversion initiative under the *Young Offenders Act 1993*, that dealing with adults is not. Under the *Controlled Substances Act 1984*, adult offences relating to the possession and use of illicit drugs other than cannabis must be diverted to the drug aid and assessment panel system, known as DAAP, as an alternative to prosecution. This is an absolute requirement and gives the police no discretion at all. Prosecution for such an offence may not proceed without the authorisation of DAAP.

A Panel under the *Controlled Substances Act* consist of three people. One must be a lawyer and the other two must be people with extensive knowledge of the physical, psychological and social problems connected with the use of illicit drugs and/or the treatment of those problems. The Act sets out the procedures and powers of the panel with great particularity. The detail may be found in the current Act. The point for present purposes is that the number of persons mandatorily referred to panels has been steadily increasing, which has, until recently, led to delays in scheduling hearings of up to 16 weeks. While recent additional State funding in 1999-2000 has reduced this period considerably, the structural requirements of the legislation still mean that there is delay between apprehension and referral, and contact with the panel. There are a number of panels. However, access to the DAAP process by adults outside the metropolitan area is problematic.

Moreover, there is clear evidence that, for unknown reasons, the referral of Aboriginal adults to panels has been extremely low. Approximately 6 Aboriginal adults have been referred to DAAP in the past 12 months. However, it is clear from Aboriginal Community organisations and other health agencies that there is significant drug dependence and drug related crime within the Aboriginal community. This issue alone shows that the State's drug diversion and treatment approaches are overdue for a comprehensive reappraisal.

DAAP has not been evaluated since it began in 1984. Funding for a comprehensive review and evaluation of DAAP was provided for in the 1999-2000 budget, and the review is under way. An interim report and tentative conclusions have been made available to the

DAAP Evaluation Steering Committee. It now seems clear that the evaluation will be complete by the time that any superseding legislation comes into force. It follows that the existence of the evaluation is no longer a reason for keeping the DAAP process in place. It therefore falls to be considered on its merits.

The evaluation does not, of course, recommend either that DAAP be retained or abolished. That is not what the consultants were asked to do. Bearing firmly in mind that the report is only in the preliminary stages, it may be noted, however, that many conclusions are not favourable to the existing DAAP process. Further detail must await the final conclusions of the review, but one thing is abundantly clear. The idea of the diversion of adults charged with minor non cannabis offences into assessment and treatment should be continued. In light of this, the relevant officers in the Department of Human Services and DASC have decided that the opportunity should be grasped to entirely overhaul the legislation dealing with DAAP so that, in effect, the prescriptive concept of DAAP should disappear wholly from the *Controlled Substances Act*. Put another way, the legislative monopoly prescribed by the Act in favour of the three person DAAP process should disappear, and the requirement of the legislation be made more flexible so that the Minister can authorise a variety of processes by which the generally agreed diversion notion may be implemented.

It should be noted that a major effect of the recommended change will be that the discretion to prosecute in simple possession cases will be removed from the DAAP quasi-tribunal system and returned to the police.

Two central conclusions flow from what has been said above. The first is that significant Commonwealth funding depends upon the State putting in place a police drug diversion program that conforms to the COAG agreement. South Australia should also be in a position to spend State monies allocated in the 1999/2000 budget to complement the COAG money. The Commonwealth is not interested in spending new monies merely to support a continuance of the status quo. Therefore, considerable funds are at risk if South Australia does not get it right.

The second conclusion that can be drawn is that the DAAP model suffers from some deficiencies that must be addressed in an alternative model. It should be emphasised that the following points are not distinct, but overlap and complement each other.

- First, modern thinking about therapeutic intervention into the life of an addict or substance abuser is that the moment of arrest must be employed (and exploited) as a moment of crisis in the person's life as rapidly as possible for maximum effect. The new police based model for drug diversion and intervention places a high premium on contact with a therapeutic regime within 24 hours of police contact. That is very difficult with the DAAP model as it is presently constructed. It is simply too inflexible and unwieldy.
- Second, there is considerable virtue in directing people into therapeutic services which are local to them and the community in which they live. Obviously, this is more convenient for the person concerned, particularly if he or she does not live in the metropolitan area. In addition, localisation enables not only effective liaison between police local area commands and drug assessment and treatment providers, but also linkages between treatment providers and other service providers such as detoxification services, housing, health services, employment services and so on. Both the institutional nature of DAAP and the fact that it must, by statute, consist of three persons make these kinds of objectives difficult.
- Third, flexibility and localisation in service provision enables greater sensitivity to and experimentation in the provision of effective and accessible treatment services to Aboriginal people, and people of other ethnic backgrounds.

The essential features of the proposed police drug diversion program for adults are as follows:

- A 24 hours a day 7 days a week appointment scheduling service will be established;
- A brokerage service would need to be established in order to purchase drug assessment and treatment services for the scheme;
- On detection or apprehension of an adult for an offence involving possession or use of an illicit drug other than cannabis, police will seek the consent of the alleged offender for referral for assessment and, if consent is obtained, will contact the appointment scheduling service to obtain an assessment appointment;
- Police would then make a direct referral for the alleged offender to attend for assessment at a specified agency by issuance of a diversion notice to the alleged offender. A copy of the diversion notice would be sent to the nominated assessment service;
- Most initial drug assessments would be undertaken by an accredited single person in a locally based agency. This arrangement is designed to provide for appropriate integration with other health and community/social welfare support systems, and enables the alleged offender to be referred on to other or more specialised treatment services should that course be warranted;
- Case management would be provided by the assessment service providers;
- There will be provision for entry by the alleged offender into undertakings for treatment and other action;
- Arrangements for compliance management would be simple—the assessment service provider would notify SAPOL of compliance or non-compliance by the alleged offender with the attendance notice and any undertakings. If in breach, SAPOL would then determine whether the alleged offender should be prosecuted. In any event, a copy of the outcome would be forwarded to the brokerage service so that payment to the agency for services provided could be made;
- In order to ensure consistency and quality control, there would need to be a degree of central program coordination. These functions would include establishing quality standards and processes for the accreditation of the relevant services and monitoring those services; development of common assessment and treatment standards, together with training and education; establishing and maintaining the around the clock appointment scheduling service; development of common undertaking formats; and promoting coordination and development of linkages between all service providers (including SAPOL).

None of these initiatives can be progressed in any way unless and until the provisions of the *Controlled Substances Act* dealing with DAAP are amended. It should be noted that a major effect of the recommended change will be that the discretion to prosecute in simple possession cases will be removed from the DAAP quasi-tribunal system and returned to the police. It should also be emphasised, however, that the disappearance of DAAP from the legislation does not necessarily mean the complete disappearance of that process or one similar to it (a three person panel could, for example, be established and accredited by the Minister as a drug assessment service). What it does mean is that DAAP is no longer required to be the only body for handling drug diversions.

It is necessary to make provision for transitional arrangements. The bill deals with the problem by stating that if a person has not yet reached DAAP, or has yet to be dealt with by DAAP in any way, he or she should be transferred to the new system. However, once the person has been dealt with by DAAP in any way, he or she will stay with DAAP. It necessarily follows that the existing DAAP system will have to stay in place long enough to deal with those people in its process at the time the new provisions come into force.

The opportunity is also taken to make an unrelated amendment to the Act of a statute revision nature.

I commend this bill to honourable members.

Explanation of Clauses

Clause 1: Short title

This clause is formal.

Clause 2: Commencement

This clause provides for bringing the Act into operation by proclamation.

Clause 3: Amendment of s. 4—Interpretation

This clause inserts a definition of 'drug assessment service'.

Clause 4: Substitution of ss. 34 to 40

This clause replaces all existing sections of Division 2 of Part 5 of the principal Act. *New section 34* continues the current exclusion of children from the application of this Division. *New section 35* provides for the accreditation (which may be subject to conditions) of drug assessment services and drug treatment services by the Minister. The Minister has a discretion of establishing panels of persons with a view to accrediting any such panel as an assessment service.

New section 36 provides that a person alleged to have committed a simple possession offence must be offered an opportunity of referral to an assessment service. If the person consents to such a referral, he or she must be given a notice that specifies the date, time and place to attend for assessment. Consent to referral operates as an automatic authority on the part of the alleged offender for the release of his or her previous medical, treatment, assessment and criminal records to the nominated assessment service. Medical records may also be released to any relevant drug treatment service.

If a person is duly referred to an assessment service, any prosecution of the relevant offence is suspended.

New section 37 sets out the power of an assessment service to require a referred person to attend the service or any other place for the purposes of the assessment. The circumstances in which an assessment service must, or may, terminate a referral are set out in subsection (3). If a referral is terminated, the person and the police must be notified by the assessment service.

New section 38 gives an assessment service the power to require an assessed person to enter into an undertaking for treatment or other action relating to rehabilitation from drug abuse. If treatment is to be required, it can only be given by an accredited drug treatment service. Undertakings cannot be for longer than 6 months. The police must be notified if a person enters into an undertaking, if the period of an undertaking is extended or if an undertaking expires. *New section 39* requires prison managers to bring persons who are in custody to any place for the purposes of complying with a notice or undertaking under this Division.

New section 40 provides that a person cannot be prosecuted for a simple possession offence unless he or she has refused to be referred for an assessment or, if he or she has been so referred, unless the referral has been terminated. The fact of consent to a referral or entering into an undertaking cannot establish an admission of guilt. If the person is prosecuted for the offence, anything said or done by him or her in the course of being assessed is inadmissible in the prosecution proceedings, as are the reasons for termination of the referral. On the expiry of an undertaking, the person cannot thereafter be prosecuted for the simple possession offence. *New section 40A* provides for the confidentiality of information gained about a person referred for assessment under this Division. *New section 40B* provides that this Division will expire on the third anniversary of the commencement of these new sections.

Clause 5: Amendment of s. 44—Matters to be considered when court fixes penalty

This clause is a totally unrelated amendment to the principal Act. It replaces a wrong reference to 'section 47' of the principal Act, which was repealed in 1986 consequentially on the enactment of the *Crimes (Confiscation of Profits) Act 1986*. This Act has in turn been replaced by the *Criminal Assets Confiscation Act 1996*. The new sub-paragraph now provides the correct cross-reference to an application for forfeiture under the latter Act.

Clause 6: Repeal of s. 61A

This clause is a consequential amendment.

Clause 7: Transitional provision

This clause provides that if a drug assessment panel has already given a person a notice to attend the panel before the new scheme comes into operation, then the panel will continue to deal with the matter under the 'old' system. All other cases (whenever the alleged offence may have been committed) will be dealt with under the 'new' system.

The Hon. P. HOLLOWAY secured the adjournment of the debate.

LIQUOR LICENSING (REGULATED PREMISES) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 November. Page 400.)

The Hon. K.T. GRIFFIN (Attorney-General): I thank honourable members for their indications of support for the second reading of this bill. The Hon. Carmel Zollo invited comment on two matters raised by the Law Society in the context of the bill. First, she asked whether it may be more helpful to distinguish between the private or public use of the conveyance rather than whether it is self-driven. She mentioned the example of the minibus which is hired for the exclusive use of oneself and a group of friends or family and suggested that the consumption of liquor should not be prohibited in this case, regardless of whether it is self-driven or driven by a hired driver.

There are two issues here. First, there is an intention to regulate situations of this type. The question was considered in framing this act and as a matter of policy it was considered that hired conveyances, even for private parties, could give rise to some of the problems of conduct such as noise and disturbance that the act aims to regulate. Secondly, however, the act does not prohibit the consumption of liquor in such circumstances. Rather it regulates it by requiring a licence. A limited licence may be arranged for a one-off social function of this type occurring on a single day for a cost of $26 upon the approval of the Liquor and Gaming Commissioner. The requirements of the act and any conditions that the commissioner may impose will then apply to the function. It is a matter of regulation, not prohibition. This amendment, as members have pointed out, is not directed at changing the underlying policy of the act in any way but aims only to rectify an unintended result of the legislation now that it has been discovered.

Secondly, the Hon. Carmel Zollo asked about the use of the word 'or' in clause 3 and whether it would restrict the function of a limited licence. The advice of parliamentary counsel has been sought on this point and confirms that, in this context, 'or' need not operate only disjunctively but is wide enough to encompass the sale, supply or consumption of liquor or any combination of these events.

The government will move an amendment to the bill. Following representations from industry, it is considered that there is a possibility of some operators hiring vehicles on a self-drive basis and then using the hired vehicle to provide transport commercially. It is not intended that such operators be able to evade the requirement for a licence in this way. Clause 2 will be recast to ensure that a licence is required in that situation.

The Hon. Mr Xenophon raised the possibility of an amendment and I will briefly deal with that. It mirrors an amendment that has been proposed in a private member's bill in the House of Assembly. The government will be opposing the amendments for a number of reasons. An obvious reason is the retrospective application of the provisions. Clause 4 of the amendments is to be taken to have come into operation on 21 October 1999. That means that any liquor licence application granted since that time or to be granted before the date of operation of the amendments, which is permitted or will permit the establishment of a hotel adjacent to a school, will be void and of no effect.

Parties who have lawfully obtained licences or who have taken steps towards obtaining such licences, perhaps at great expense, would be unable to trade as permitted by those licences. The government considers this an unacceptable interference in the most fundamental lawful rights. It is opposed in principle to such retrospective operation because of its inherent unfairness.

Because the proposed amendment is similar in terms to a private member's bill as I have referred to introduced in the House of Assembly, we have had the benefit of comments made on that bill that are equally applicable to this amendment. In particular, the Law Society has written to me expressing serious concerns about the measure. In its letter, the society says in respect of the identical provisions:

> The legislation should be strongly opposed. The Law Society is opposed as a matter of principle to retrospective legislation, especially as appears to be the case here, where it is directed towards the prohibition of a specific and otherwise lawful commercial project.

The objection is yet stronger when one recalls that the presence of a hotel near a school does not necessarily pose any threat to the welfare of children attending the school.

Much depends on the design and management of the hotel, any means of access between the hotel and the school, the hours of trading, and the proper application by the licensee of the responsible service and consumption principles on which the act is based. There are many examples to be found in this state of schools and licensed premises operating in close proximity without mishap.

The amendment does not allow consideration of whether any threat is posed to children by the particular proposed licence. Regardless of whether or not there is, the licence must be refused. Further, the development and licensing processes already allow consideration of the effect of a proposed licensed facility on the local community. Development plans are prepared consultatively that map out how development should occur in a particular council area, taking account of the needs of the particular community. Development then proceeds having regard to that plan.

In the case of hotel licence applications, there is a requirement to advertise the proposal and an opportunity to object. A council can intervene in the licence application. That allows any risks to be considered on their merits. If a licence is granted, conditions can be attached to it in the discretion of the licensing authority under section 43. This case-by-case approach, taking into account the particular circumstances and the concerns voiced by the local community, appears to the government both fairer and far more effective.

Because the terms of the amendment are the same as the terms of the bill referred to, there has been an opportunity to consult interested parties. The government has received representations from industry to the effect that the provisions are unnecessary because any concerns of this type can be addressed in the present application process. Equally it has received comments from the Drug and Alcohol Services Council, which expressed concern at any rigid and prescriptive approach to this issue.

Some other effects of the amendment need to be considered. It will not be limited in its effect to hotels that are next door to schools as some might think. The term 'adjacent' as used in this act refers to any premises that are in close proximity to each other. For example, this amendment might prevent the establishment of hotels on premises that back onto or are diagonally across from a school, even though they may be widely separated and there may be no means of direct access. Quite likely it can include premises across the road, directly or diagonally, from each other. Perhaps it extends to premises in the same building where, for example, a matriculation college and a hotel are on different floors of a multi-storey building. Obviously there is potential for litigation about whether or not premises are in close proximity.

Further it is not clear whether the amendment would prevent the transfer of a licence in the case where a hotel is already located in close proximity to a school. That depends on the meaning to be attached to the phrase 'result in'. It could possibly preclude the transfer of an existing licence to a new licensee so that any hotel close by a school would lose its licence eventually. If so, this again has an unacceptable retrospective effect and one that I imagine would cause great concern to industry.

The amendment might also preclude the granting of a licence even where the school in question is closed, since the premises could still be said to be school premises, but not to restrict the granting of a licence where land has been acquired to build a school but no school yet exists. Again, probably litigation would be needed to resolve those questions.

Finally, and much more importantly, the government is not satisfied that the amendment would offer any increased protection to children, effect on the local community and the amenity of the area, and that is considered in the development and licensing processes as they now stand. If there is any reason to fear harm, these processes exist to address it. If the amendment were motivated by any real belief that children were at risk from persons consuming alcohol nearby, it would not be limited to hotels but would encompass other licensed facilities such as clubs, entertainment venues, wineries and restaurants, and perhaps also retail liquor outlets.

Likewise it would not be based on the arbitrary criterion of whether a hotel was adjacent within the meaning of the act but would look at the realities of the situation such as whether there was any means of access from the one premises into the other, whether patrons would come into contact with children when leaving the hotel, and similar matters. Such questions are best considered individually having regard to the particular situation, and that is what happens now.

In the bill that I introduced only a few minutes ago there is an alternative approach. That alternative approach will give members the opportunity to consider the likely effectiveness of that model rather than approving the rigid and inflexible model in the amendment we will debate in committee. I commend all of the bill, particularly that part that deals with this issue. It is much broader, it is not retrospective and it is not mandatory, except to the extent that it is mandatory for the licensing authority to consider issues relating to the welfare of children where a licence is sought for licensed premises and not just hotels which are in the vicinity of a school, that is, kindergartens, primary schools or secondary schools.

I thank members for their support of the bill and for their indulgence in allowing me to discuss that particular proposed amendment so that, when voting on the amendment in committee, if the Hon. Mr Xenophon decides to continue with it, the committee can have all the facts.

Bill read a second time.

In committee.

Clause 1.

The Hon. NICK XENOPHON: I move:

Page 1, line 10—Leave out '(Regulated Premises)' and insert: (Regulated Premises and 1130 near Schools)

The amendment relates to section 4 coming into operation on 21 October 1999. I understand that the Attorney has a difficulty with retrospectivity. I concede that this provision is inserted to deal with the potential problem of licensed premises being established immediately next to the Woodend Primary School. The matter appears to have been dealt with by virtue of the government's purchase. I will still proceed with that amendment, but it seems—

The Hon. K.T. Griffin: Events have overtaken it.

The Hon. NICK XENOPHON: Yes, events have overtaken it.

The Hon. K.T. GRIFFIN: I indicate formal opposition to the amendment. Events have overtaken it. It related specifically to the Woodend school, and the Minister for Education and Children's Services has indicated the government's acquisition of that potentially offending property next door to the school for the purposes of expanding the school premises to meet significantly growing demands in that area.

I have already indicated the reasons why the government cannot support the proposal. It is now outdated by more than six months: 21 October is the date from which this has an

effect. It has the potential to create a significant injustice and is totally inflexible. I urge members to note the provision in the bill introduced a few minutes ago that deals more effectively with this matter in a way that is supported by the liquor industry, the Drug and Alcohol Services Council and the Aboriginal Drug and Alcohol Council, so we have a significant measure of support across the spectrum and not just from one part of the community.

The Hon. CARMEL ZOLLO: The opposition would support the Hon. Nick Xenophon's amendment in relation to this date, but I appreciate that events have overtaken it. Whilst I have not really had the opportunity to look at the bill introduced today, I appreciate the Attorney's comments.

The Hon. M.J. ELLIOTT: I have had an opportunity to have a brief discussion with the Hon. Mr Xenophon and the situation is that this was directed at a particular circumstance that no longer exists and to have sitting on the statutes a law that has no purpose does not make a great deal of sense. So, whilst one has sympathy for what the amendment set out to achieve at the time it was tabled, it is a nonsense for it to become part of the statutes now. For those reasons and not for a lack of sympathy with the original intent, the Democrats will not support it.

The Hon. T. CROTHERS: I was of an inclination to support the Hon. Mr Xenophon's amendment, as the Hon. Mr Elliott has just stated regarding the Democrats position. Will the Attorney now tell me why the amendment is outmoded?

The Hon. K.T. GRIFFIN: It originated in a private member's bill from Mr Hanna in the House of Assembly and was to deal with the possibility that in the Woodend Shopping Centre, because it was having difficulties filling all the tenancies, there was a proposal that it be changed to a hotel or tavern, but the council subsequently rejected the planning application. It went through the planning process to get approval to build the hotel or tavern and the planning authority, the local council, rejected it, so it could not get up anyway unless it went on appeal and an appeal overturned it. The Liquor and Gaming Commissioner had an application for a licence and that had been adjourned to await the outcome of the planning decision. Since then, the government has acquired the property for the purposes of the school.

The Hon. T. Crothers: For $3.6 million?

The Hon. K.T. GRIFFIN: I think it was $3.8 million. As the Hon. Mr Elliott says, if we pass this amendment, it will deal specifically with hotel premises adjacent to a kindergarten, primary or secondary school as from 21 October 1999—seven months ago. It could well create injustice, particularly for the future. If there happens to be a hotel near a school or adjacent to a school and if the licence is to be transferred, this may operate to prevent the transfer of that licence. It has a retrospective effect. In addition to that, it deals only with a hotel licence and not with other forms of licence. It does not give the sort of flexibility that is in the bill which I introduced this afternoon. There is a provision in the bill that I introduced this afternoon to amend the Liquor Licensing Act which specifically addresses this issue but in a way that requires the licensing authority to have regard to the potential prejudice to children, and to deal with it in respect of all licences and not just hotel licences.

The Hon. T. CROTHERS: The Attorney-General is saying that not only could the position be in respect of the transference of a licence by a hotel from one licensee to another—either a hotel or a club—but that a position could be held in the newer areas, for instance, Golden Grove, where the hotel was built before the school. Even under those circumstances, any future transfer of the licence would place the hotel and/or the club in jeopardy. In my discussions with the Hon. Mr Xenophon, I indicated that if it related to all licences I could support his amendment, but I understood that it only related to the hotel licence. The honourable member is telling me now that that is the case: it is the amendment on file, and it has not been altered. If it is still only the hotel licence, I will not support it.

The other issue that concerns me is the transfer of the licence where the cart could be put in front of the horse whereby the school is the second building erected. In that situation the proprietor of the hotel is then placed in double jeopardy or, if you like, he is put at risk through no fault whatsoever in respect of the original licensee of the hotel. Under those circumstances, I will not be supporting Mr Xenophon's amendment.

The Hon. K.T. GRIFFIN: What the honourable member has said about even existing licences is correct. The amendment provides:

> The licensing authority cannot, after the commencement of this section [which is 21 October 1999] grant any application under this act (whether made before or after that commencement) if to do so would result in a hotel being adjacent to school premises.

Of course, 'an application' also means an application to transfer. I would have some disagreement with the honourable member in respect of his indication that if it applied to all licences he might support it. I would hope to persuade him—

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: I stand corrected and I would urge the honourable member, and others, to look at the bill introduced this afternoon because it deals specifically with that issue in a more flexible way.

The Hon. NICK XENOPHON: I thank the Labor Party and the Hon. Mr Cameron for their support in principle of this clause. I can understand that events have largely overtaken it but, nevertheless, I do not seek to withdraw this amendment and would like the committee to vote on it.

An honourable member interjecting:

The Hon. NICK XENOPHON: No, I am saying that I think that there are important principles at stake but, in the circumstances, I thank the opposition and the Hon. Mr Cameron for their expressions of support in relation to the principles in respect of this amendment.

The Hon. CARMEL ZOLLO: I thought we were dealing with only 1A.(2) in relation to that date rather than the rest of it. We are supporting the rest of it.

An honourable member interjecting:

The Hon. CARMEL ZOLLO: Because it has been overtaken.

The Hon. NICK XENOPHON: I apologise to the Hon. Carmel Zollo for my misunderstanding. I ask honourable members to put me out of my misery in relation to this clause sooner rather than later.

Amendment negatived; clause passed.

The Hon. NICK XENOPHON: I do not intend to move my next amendment as it is consequential.

Clause 2.

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

> Page 1, lines 15 and 16—Leave out paragraph (a) and insert the following paragraph:
>
> (a) by inserting in the definition of 'public conveyance'', but does not include a conveyance hired on a self-drive basis if all passengers (if any) are to be transported free of charge or other consideration' after 'members of the public';

This amendment amends the definition of 'public conveyance' to make clear that the exclusion is limited to the case where the conveyance is hired on a self-drive basis, with the passengers being carried free of charge. The exclusion is not intended to apply where the driver pays to hire the vehicle but then uses the vehicle commercially to carry paying passengers. In the latter case, the conveyance will be regulated premises and the appropriate liquor licence will be required.

Amendment carried; clause as amended passed.

Clause 3 passed.

New clause 4.

The Hon. NICK XENOPHON: I move:

Page 2, after line 8—Insert:

Insertion of section 53A

4. The following section is inserted after section 53 of the principal act:

Applications resulting in hotel adjacent to school premises to be refused

53A (1) The licensing authority cannot, after the commencement of this section, grant any application under this act (whether made before or after that commencement) if to do so would result in a hotel being adjacent to school premises.

(2) However, this section does not apply in relation to an application for—

(a) a temporary licence on the surrender or revocation of a hotel licence; or

(b) revocation of the suspension of a hotel licence.

(3) The grant of an application in contravention of subsection (1) is void and of no effect.

(4) In this section—

'hotel' means premises that are subject to a hotel licence;

'school' means a kindergarten, primary school or secondary school.

This amendment has already been canvassed at length. To reiterate: the amendment will essentially ensure that there will not be a hotel adjacent to school premises. The spark for this was the Woodend Primary School issue which, of course, has been dealt with; however, the principle is the same. It is an important principle, particularly in relation to primary schools and kindergartens. The community demands that hotel licences not be approved for premises adjacent to schools.

I congratulate the Attorney-General in respect of the bill which he introduced today in relation to the Liquor Licensing Act. It does go some way in meeting a number of those concerns but I still wish to persist with this amendment.

The Hon. K.T. GRIFFIN: I oppose it for all the reasons I have already outlined.

The Hon. CARMEL ZOLLO: I indicate the opposition's support for the Hon. Nick Xenophon's amendment. As I said before, we have not had the opportunity to study the Attorney-General's bill which was introduced today. I realise that the reason related to the Woodend Primary School issue and I know that my colleague in another place Kris Hanna, the member for Mitchell, was pleased to see this amendment. I still believe it is appropriate. It is appropriate to listen to communities and, whilst this situation has been resolved, there is nothing to say that it will not occur in the future.

I understood the word 'adjacent' to mean 'next to', and 'school' to mean a kindergarten, a primary school or a secondary school. I also understood there were proper exemptions in the provision that was drafted to take into consideration situations that can occur in the event of surrender or relocation of hotel licences. At this stage, not having studied the other bill, I indicate the opposition's support for the Hon. Nick Xenophon's amendment.

The Hon. T. CROTHERS: I have canvassed my reasons previously, which I think are still extant even in this amendment. What troubles me is the retrospectivity and the licence transference: it still troubles me that someone could spend $1 million building a new set of premises and two or three years later the situation changes. In the example of Darcy up at Roxby Downs, he did not stay long in the premises which cost, I think, a couple of million dollars to build. Had a school then been built adjacent and he had wished to sell the premises, he would have been in real trouble under the terms of the amendment.

I think the Attorney-General has listened and I understand the principle enshrined in the Hon. Mr Xenophon's amendment. There is nothing wrong with the principle: the problem and the devil I have is in the detail of his amendment in so far as it is much wider than I think the Hon. Mr Xenophon originally intended. So for the reasons I have stated previously and for the reasons I have just stated, I will be supporting the Attorney-General in this matter.

The Hon. K.T. GRIFFIN: I draw members' attention to the fact that 'adjacent' is defined in section 4, which is the interpretation section, of the principal act. It means 'places or premises are adjacent if they adjoin (either in a horizontal or vertical plane) or if they are in close proximity to each other'.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: No, that depends on one's belief. We address the principle of the issue in the bill which was introduced earlier today. I suggest that that will be more than adequate to address the principle reflected in the Hon. Mr Xenophon's amendment. I oppose the amendment.

New clause negatived.

Title passed.

Bill read a third time and passed.

CRIMINAL LAW CONSOLIDATION (APPEALS) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 28 October. Page 282.)

The Hon. A.J. REDFORD: This is similar to provisions that have been brought into this place before by the government. I have supported this approach in the past and I will support it again today. In terms of simplicity, I will explain why. I support it on the basis that the net effect of this legislation will be to render judge only trials to oblivion. I am opposed to the principle of judge only trials in the criminal jurisdiction, and this is one practical means of removing it. It is for that reason I support the government's position.

The Hon. NICK XENOPHON: I oppose this bill after consultation with the Law Society and, in particular, discussions with Lindy Powell, a former President of the Law Society. I am concerned that in some way this will weaken the role of trial by judge alone. I can understand the government's position with respect to this but I do not agree with it. My view is that, if we have trial by judge alone, a defendant who is tried by judge alone ought not be treated differently from a defendant who is tried by a judge sitting with a jury. For that reason I oppose the bill.

The Hon. K.T. GRIFFIN (Attorney-General): I can thank some members for their support for the second reading of the bill. I express disappointment at those who oppose the second reading of the bill. The Leader of the Opposition and the Hon. Ian Gilfillan both consider that to allow an appeal against acquittal by judge alone places an accused person in double jeopardy. As pointed out in the second reading

explanation, the High Court has, while acknowledging the principle of double jeopardy, made it clear in the case of Davern v. Messel 1984 58 Australian Law Journal Reports 321 that there is no principle precluding an appeal from an acquittal in Australia where there is express statutory provision for such an appeal. It is understood that appeals against acquittals have been permitted under the Western Australia criminal code since 1994, both on questions of law and on questions of mixed fact and law.

It is also pointed out in the second reading explanation that in Canada the Crown has had a right of appeal against an acquittal under the Canadian criminal code on a question of law alone for almost 100 years. The Supreme Court of Canada, in R v. Morgentaler, Smoling and Scott 1985 22 Dominion Law Reports 4th 641, said that these provisions do not offend the provisions of the Canadian Charter of Rights dealing with double jeopardy protection or any other provisions of the charter. Similarly, the Canadian courts have held that an appeal on questions of fact does not violate the protection against double jeopardy (see, for example, R v. Century 21 Ramos Realty Inc. and Ramos 1987 32 CCC 3rd 353).

In Davern v. Messel, Justices Mason and Brennan indicated that the policy considerations which led to the development of the rule against double jeopardy are not as readily applied to an appeal by the prosecution. It was said:

> . . . the powerful considerations which made it unfair and unjust that a man should be prosecuted twice for the same offence seem to lose some of their force when an appeal is sought to be equated with a second prosecution. A second prosecution for the same offence immediately raises the spectre of persecution. Although the pursuit of a Crown appeal might be carried to the point of persecution, the risk of that occurrence is more remote, if only because the accused would be protected by the courts against an appeal which was instituted mala fides or amounted to an abuse of process . . . Moreover, the Crown has a legitimate interest in securing the review of a trial, more particularly if it appears that the trial judge has made an erroneous ruling on a question of law or departed from correct procedures.

Thus the situation where a prosecutor seeks to appeal an acquittal, which may be considered part of the one action, is greatly different from the situation where the prosecution, having been faced with an acquittal, brings a new action against the defendant based on the same set of circumstances.

In South Australia, appeals against acquittals by magistrates are already permitted. While acknowledging the differences in the types of offences that are dealt with by magistrates, I suggest that the arguments relating to double jeopardy are the same whether a person has been dealt with by a magistrate or in the District Court by a judge sitting alone. There are a number of similarities in both cases.

In both cases, a single person decides both the facts and the law. The decision of a single person determines whether the person is convicted or goes free. It is not thought unusual or contrary to public policy in Australia to allow an appeal from an acquittal by a magistrate, recognising that the jurisdiction of magistrates is at least in this state, as well as in some other jurisdictions, extensive. Yet while appeals from acquittals by magistrates are allowed, appeals from acquittals by a single judge are not allowed.

Members opposite have suggested that this act would place defendants in double jeopardy, but what about the victims of offences? If a mistake is made by a single judge, a guilty person may go free.

While a question of law may be reserved for consideration by the court and the principles followed by the single judge ultimately overturned, this will be of little comfort to the victims of the offence. It is important that justice be done not only through establishing correct principles of criminal law but also in the particular instance. This bill balances the rights of the accused with the interests of justice as a whole.

I note the remarks made by the Hon. Angus Redford on a previous occasion when the bill was before us. I appreciate the fact that he will support the second reading, but I must put on record that I do not share his view—and to this extent we will need to agree to differ—that this bill when passed will mean the death of trials by judge alone. I believe that trials by judge alone will continue to be both available and used, particularly in some of those cases where taking a matter to the jury, such as child sexual abuse, might well be a recipe for a guilty verdict, regardless sometimes of the way in which the case might be presented. Be that as it may, it is an important bill, even though it will affect a relatively small number of cases. The weight of principle is in its favour.

The Council divided on the second reading:

AYES (9)

Cameron, T. G.	Crothers, T.
Dawkins, J. S. L.	Griffin, K. T. (teller)
Laidlaw, D. V.	Lawson, R. D.
Redford, A. J.	Schaefer, C. V.
Stefani, J. F.	

NOES (8)

Elliott, M. J.	Gilfillan, I.
Holloway, P. (teller)	Kanck, S. M.
Roberts, R. R.	Roberts, T. G.
Weatherill, G.	Xenophon, N.

PAIR(S)

Lucas, R. I.	Pickles, C. A.
Davis, L. H.	Zollo, C.

Majority of 1 for the Ayes.

Second reading thus carried.

In committee.

Clause 1.

The Hon. T. CROTHERS: Although I supported the second reading and had up until fairly recently decided that I would support the bill, I have a niggling worry that I will address to the Attorney and perhaps he will be able to assuage my fevered brow. My worry is that this opens another avenue of appeal for Crown Law in respect of particular cases.

I think that wealthy people have a very great advantage in legal proceedings as it is, and I would not like to think that what we were opening up was an avenue for some government, whether through the Attorney-General or the DPP or whoever, that might wish to prosecute someone out of existence by appealing a particular decision. My worry is that under certain circumstances this could open up the law further to wealth, that is, the wealth and power of governments as opposed to the wealth and power of individuals who continually use their wealth and power to grind down their opposition in our courts of law. Perhaps the Attorney-General could address his quite fertile mind to that, and hopefully assuage my fevered Bolshevik mind in respect of the wealthy.

The Hon. K.T. GRIFFIN: The question is a difficult one to answer in this respect. Ultimately it comes back to the good sense of the Director of Public Prosecutions. The Director of Public Prosecutions in this state has the responsibility, independently of government and independently of the Attorney-General, to determine the cases in which either there will be a prosecution, there will be no prosecution, a nolle prosequi will be entered, and if there should be an appeal—either on sentence, which occurs now (not extensively but in appropriate cases), or presently where there has been

trial by judge alone and there has been an acquittal, the DPP may appeal on a matter of law, but that will not affect the acquittal. We are taking this one step further in respect of an acquittal.

What the honourable member raises is a relevant consideration for summary offences, because now there is an unlimited opportunity for the prosecution to appeal an acquittal or a sentence but, for the purposes of comparison, an acquittal, in respect of summary offences. Evidence has not been demonstrated in the years that I have been in parliament that either the crown prosecutor, as he then was described, now the Director of Public Prosecutions, has evinced at a vindictive approach to his responsibilities.

The Hon. T. Crothers: I am thinking in terms of the—

The Hon. K.T. GRIFFIN: I understand the point that the honourable member makes. I guess there can never be 100 per cent safeguards in relation to that sort of aberrant human behaviour. What we have now in this state is a much more rigorous approach to prosecution, particularly at the indictable end, and this is what we are talking about, where the DPP is bound by statute to act responsibly and according to law.

There is a body of common law developed about the role of the prosecution. The Chief Justice was talking about that this morning at a very well attended conference on victim support services where he indicated that in our system the Director of Public Prosecutions is not there to prosecute on behalf of the victim but is there to prosecute on behalf of the state and to act independently in a way and in accordance with the evidence which might be available. I think those sorts of principles of the common law are the principles which provide some measure of protection against the abuse to which the honourable member refers.

If on the other hand there was a so-called test case, that would be a different matter. They do not happen very often, but on occasions, even in my time as Attorney-General, we have authorised payment of defence lawyers' costs if they were not being funded by legal aid, and in one instance, even though they were being funded by legal aid, to ensure that the principle, the subject of the test case, was properly argued before the court and the defendant was not out of pocket. So, ultimately, it does depend very much upon good sense, the principles which have developed, and the statute (the Director of Public Prosecutions Act) which enshrines the principles by which the DPP operates.

The Hon. T. CROTHERS: You have stolen some of my thunder. The other thing I was looking at as an act of persuasion was the availability of legal aid to the poorer type of person. I am not worrying about people who have money or are wealthy and capable of briefing and hiring professional help in respect of defending such an application to the DPP. I am worrying about the impoverished type of person who may not be able to afford it.

In recent times we have seen the judiciary take a stand in respect of the lack of money to fund professional help where they have refused to hear cases. I can recall at least two or three cases in the past 18 months to two years where that has happened. I am worried about the person who does not have the wherewithal to defend such a case. To some extent, you have assuaged my fears by saying that it was a test case, but that is a caveat on the broader spectrum of what we are dealing with here—albeit it goes a fair part of the way. I assume that Mr Rofe, our DPP, would really be appealing for a number of reasons, not the least of which may well be something to set a standard with respect to jurisprudence.

The Hon. K.T. GRIFFIN: That happens now in relation to sentencing.

The Hon. T. CROTHERS: Yes, I see that. But what occurs if the person is not granted funds by the Attorney-General of the day (we may not always have the honourable member as Attorney-General) or, alternatively, legal aid does not have a sufficiency of funds to meet a case which might well be quite voluminous with respect to the extent and duration of the hearing? What occurs in that instance?

The Hon. K.T. GRIFFIN: I can give no absolute assurance to the honourable member. To do so would be misleading and foolish. In respect of legal aid, all I can say is that, for long and expensive cases, a cap is imposed by the Law Society. Under the Dietrich principle established by the High Court a person who is indigent is entitled to proper legal representation, and that ultimately means payment by the state.

The Hon. T. CROTHERS: Is the Attorney saying that the Dietrich principle enshrines it forever whereby a defendant is entitled at all times to be represented, or is it only on a de facto basis and it is not in the law but simply a judicial decision in respect of Dietrich?

The Hon. K.T. GRIFFIN: Not necessarily in respect of an appeal, but certainly in respect of the trial. And, in fact, it is a matter of law: even though determined by the High Court and not enshrined in statute, it is a matter of law. In this state, we are trying to develop a legislative response that will set a more appropriate framework within which the issue of costs can be addressed. That is down the track, and I am hopeful that legislation will come to the parliament to enable us to consider that in the not too distant future.

In respect of legal aid, if there is a case in which the cap has not been exceeded, there is still a discretion for the Legal Services Commission, according to its guidelines which are published, to determine whether or not a matter should be allowed to go on appeal one way or the other. And, most likely, if the Crown is appealing, and if the cap has not been exceeded, I would expect the Legal Services Commission to make funding available for that appeal. If the cap has been exceeded, I will just have to take on notice what might be the Legal Services Commission's approach to that.

The Hon. T. CROTHERS: Can I put the question, and when the bill goes to the other place the Attorney-General can provide me with an answer? I will support the Attorney-General if he gives me that undertaking.

The Hon. K.T. GRIFFIN: That is fine. I will bring back a response for the honourable member in more detail. In the budget handed down today, we have provided another half a million dollars for legal aid. Last year, it was $1.7 million for state cases: this year, it is another half a million. That is very largely—

The Hon. T. Crothers: How much will the federals grab back?

The Hon. K.T. GRIFFIN: They will not grab any back, because this is for state-based cases, and it largely goes towards allowing us to increase the hourly rate paid to lawyers. They have not had an increase since 1992.

The Hon. P. Holloway interjecting:

The Hon. K.T. GRIFFIN: Yes.

The Hon. T. CROTHERS: With those assurances, I indicate that I will support the Attorney. But I am still disturbed, and I think I will continue to be disturbed, about the point that I raised, albeit it might be remote. To me, it just enshrines the position that wealth plays with respect to justice

being done at times under our Anglo-Saxon system of laws; our Westminster system of laws.

What I see as the necessity for this step, and I do not think that anyone has touched on this point, is the fact that society has gone global. Many large companies are liable to do all sorts of things in respect of their participation in South Australia, and I refer here to environmental damage and other things. It is important for this step to be taken, even on that basis alone. Because of the globalisation of our society, it is a necessary step, in my view, and, when I put it on the scales of balance, it probably outweighs my fears about the other matter. So I believe that it is important for the DPP to have that additional power of appeal because some very wealthy corporate citizens, now that we have gone global, may have to be taken to task by governments subsequently.

It is one of the problems of globalisation that to a great extent the laws of individual nations have not kept pace with the depredations being imposed on them by the global corporate citizens of this world. That is a tragedy. Whether by accident or design, to some extent this is a minuscule ray of light in that direction in respect of widening the DPP's powers of appeal. Given the Attorney-General's assurances, and when I put these points on the scales of balance, my fears are balanced at this stage and, when the Attorney comes back, another pennyweight will be put on the side of assuaging my fears, and I will be able to support the bill when it returns from another place and is recommitted. At this stage I will support, at least pro tem, the bill that is before this committee.

The Hon. R.R. ROBERTS: A few points have been raised in the exchange between the Attorney and the Hon. Mr Crothers. There seems to be a mixing of the different facets of the law because I assume that environmental damage is a civil matter and this legislation, as I understand it, applies to the criminal law.

The Hon. K.T. Griffin: Indictable offences.

The Hon. R.R. ROBERTS: When we talk about indictable offences, we are really talking about dire consequences in the general sense. Not being a lawyer, but being interested in the presumption of innocence, one assumes that the courts still start from that point. As I go through this, I ask the Attorney-General to tell me where I am wrong. An accused comes before the system and at some stage the defence makes a choice between whether the case is heard by judge alone or by judge and jury.

The Hon. K.T. Griffin: After committal, yes.

The Hon. R.R. ROBERTS: After committal, the choice is made. I would have thought that governments would be attracted to that on cost grounds because it would be less costly to have a trial that involved the expenses of the learned judge only as opposed to the expenses of the learned judge plus the 12 jurors. My understanding is that, at present, that choice is made. One assumes also that the person who is adjudged to be innocent when he appears before the court, although he is under reasonable suspicion, has access to the law and one also assumes that it has equal standing at that stage.

The accused can say, 'I will be tried by judge alone', which is very legitimate, very lawful; or the accused can say, 'I will be tried by jury.' In support of his argument, the Attorney earlier said that if the learned judge makes a mistake, at present there is no right to appeal the decision. I put it to the Attorney that it is just as feasible that 12 people on a jury can make a mistake. At present an accused person has a choice to go down a certain path, as is his or her right (bearing in mind that that person is presumed innocent when he or she comes into the system), which all the legislation judges equally. It is the accused person's choice.

One assumes that a learned judge would be more experienced and in a better position to make a judgment on all the points of law as to whether a person is innocent or guilty. I do not dispute that trial by jury is a good thing, but in many cases we have ordinary people sometimes judging very complex questions. What occurs at present, as I understand it, is that if the accused person is acquitted by a judge sitting alone the prosecution cannot appeal. If the accused person is acquitted by a jury they cannot appeal. That is the present situation based on this presumption of innocence, which we all support.

The Attorney's proposed amendment abolishes an accused person's right to appeal, and this impinges on the question of money to which the Hon. Trevor Crothers referred. Many people who find themselves in this position are often the poorer people of society. That legitimate, equal choice having been made and the person concerned acquitted, the Attorney now proposes to say, 'The judge may have made a mistake, so we can appeal against this person and put them back through the wringer', and that person then goes back through the system; whereas, if it is trial by jury (and I am talking about the same circumstances, the same crime) and the accused is found to be innocent, the prosecution cannot appeal.

Why is it then that the Attorney does not concede the point that has been made on a number of occasions that this becomes a B-grade system of justice and, in a sense, double jeopardy for that particular accused person who, at the start of the proceedings, was presumed to be innocent?

The Hon. K.T. GRIFFIN: It is not double jeopardy because—

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: It is not. It is an appeal. If there has been an error it is not double jeopardy. I have just been through the double jeopardy arguments, and even the High Court does not—

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: In Canada they do have appeals from juries but there is no way that is ever going to occur in Australia. When I responded—and I do not want to repeat it all—

The Hon. P. Holloway interjecting:

The Hon. K.T. GRIFFIN: No.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: You have not let me answer it yet.

The Hon. T. Crothers interjecting:

The Hon. K.T. GRIFFIN: No, but if they were subsequently charged with another offence arising out of the same set of circumstances that is double jeopardy.

The Hon. T. Crothers: In other words, if an accused person was up for three offences and you proceeded on only one, the other two being left in abeyance, and the jury finds him not guilty on that first offence—

The Hon. K.T. GRIFFIN: If they all arose out of the same set of circumstances you could not try that person again, because that is double jeopardy. Let me run through the scenarios for the Hon. Ron Roberts. With both a jury trial and a trial by judge alone they relate to indictable offences. Indictable offences are those which have to be tried in a superior court unless they are minor indictable, that is, a maximum penalty of imprisonment over two years and up to five years, in which case an accused can then elect to be dealt

with summarily in a court of summary jurisdiction. Putting that to one side, if a person—

The Hon. R.R. Roberts: What if both processes are equal and legitimate at that stage and he chooses to go down one?

The Hon. K.T. GRIFFIN: We will get into the argument on what is equality. What is equal is that they may both go through a committal process.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: It always could. If the accused is committed for trial, then the accused goes up through a jury trial and you have to remember that the functions of finding the facts are the functions of the jury in secret—12 ordinary men and women—the cornerstone of our criminal justice system.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: You do not know that they make a mistake: you presume that they make a mistake.

The Hon. R.R. Roberts interjecting:

The Hon. K.T. GRIFFIN: No. You presume the jury makes a mistake. There is no way you will ever know what was the thinking of the 12 men and women who brought the issue to a conclusion in a finding of guilt or an acquittal. But you have to remember that the functions are divided. The judge presides and gives directions to the jury, summing up the evidence, identifying what is the law, what is the burden of proof, what facts will establish or satisfy the burden of proof, and what are the alternatives if alternative verdicts can be determined. The jury in the secrecy and confidentiality of the jury room takes account of what the judge has directed and may either acquit or find the charge proven beyond reasonable doubt.

Then the accused who is found guilty by a jury may appeal, arguing that the judge has made a mistake in the directions the judge has made. The DPP can appeal against the sentence or on a question of law if there is an acquittal, but that does not affect the acquittal. All the weight is with the accused. Where there is a trial by judge alone, the judge is in fact doing two things. The judge is there presiding, hearing the evidence and giving himself or herself directions—the same sort of directions that might be given to a jury (whether they are done openly or just in the mind is another matter, but usually they are done by way of a judge making remarks and delivering a verdict). Having gone through that phase, the judge in a sense moves back and considers the facts as though he or she were the corporate jury and then makes a decision. That is one person, and most frequently—

The Hon. R.R. Roberts: Highly qualified.

The Hon. K.T. GRIFFIN: Sure. If you want to open up that debate, do you want 12 judicial or highly qualified persons on a jury, because you are starting to trespass into a very difficult area? If you are saying that the judge is highly qualified, does that mean that that judge is better equipped to give a verdict than are 12 ordinary men and women? If we start to get into that argument, we open up Pandora's box.

The Hon. P. Holloway: In a corporate matter he well might be.

The Hon. K.T. GRIFFIN: Not necessarily. What I am seeking to do in relation to this bill is to extend what already happens in the courts of summary jurisdiction. The accused can appeal against a conviction and against sentence, and we must remember that some of those matters can involve up to two years' gaol. Some until relatively recently were minor indictable offences that could be tried by judge and jury.

But, during the days of the Labor administration, they extended the range of offences which would be summary and diminished the range of offences for which a jury trial would be allowed. If in the Magistrates Court there is a right for the accused to appeal against verdict or sentence, there is also a right for the prosecutor to appeal against verdict and sentence; then it seems to me in principle there is no difference in imposing the same opportunities for the Director of Public Prosecutions on a judge who sits without a jury. There is no difference in principle.

The Hon. R.R. ROBERTS: In fact, the difference is that today that is not possible, but until today you have accepted the legitimacy and evenness of both streams. You have accepted that.

The Hon. K.T. Griffin: I have not accepted it.

The Hon. R.R. ROBERTS: We are not considering your personal experience but the law and legislation. The law and legislation accept those two streams, and you get to make a choice, knowing as we do today that if you are found not guilty in either stream there is no appeal by the prosecution, except in the circumstances you have outlined. So, what you are saying today is that, while that will still apply with the trial by jury, it will now no longer apply because, having been found not guilty, you can be dragged back through the appeal process and go through it all again. That is a significant change from the status quo which takes away rights that people currently enjoy. I do not believe that it is for any good reason, other than to satisfy the whims of people like you, with all due respect: practitioners in the law and professionals.

I am not interested in the egos and opinions of the lawyers: I am interested in the right of ordinary citizens who are charged through the system to be presumed innocent until found guilty. This problem you are talking about today starts at the point where, having been judged by an appointed judge of Her Majesty's court, they have been found innocent. Now you seek to deprive them of the right, having won that case, to have an appeal, because of some professional theory.

The Hon. T.G. Cameron interjecting:

The Hon. R.R. ROBERTS: We have been through that. If the judge made an error in the law—

The Hon. T.G. Cameron: Let the murderer, the home invader and the rapist go free?

The Hon. R.R. ROBERTS: Rather let more than one go free than hang one innocent one.

The Hon. K.T. GRIFFIN: It is not a whim for me. In 1984 when this trial by judge alone was brought into our law, I sought to have the right of appeal extended to the Crown. I was not successful. I have been consistent in my approach on this, so it is not a whim—it is not even a passion—but I believe that it is an appropriate amendment to make to the law. There is still a choice. If the accused chooses to be tried by judge alone, these are the rules. The accused can continue to choose to go before a judge and jury. It seems to me that the honourable member, whilst—

The Hon. R.R. Roberts: This will force him to go to a judge and jury.

The Hon. K.T. GRIFFIN: No, it will not, necessarily. There still might be some people who will be very apprehensive about going to a jury where there are child sex abuse charges and who will still be prepared to run the gauntlet of a trial by judge alone on the basis that there might be a right of appeal in the DPP if the judge has been wrong. That is all it is about. I do not see why, if the magistrate is wrong and

there is a right of appeal, you cannot do the same for a judge, where the judge is sitting alone.

The Hon. IAN GILFILLAN: The fact that the Attorney was consistent since 1984 does not necessarily mean he is right, and I am sure he accepts that. The anachronism is that trial by judge and jury vis-a-vis trial by judge alone are presented as equivalent courts of law.

The Hon. K.T. Griffin interjecting:

The Hon. IAN GILFILLAN: The accused has the option of A or B. Choosing A protects the accused from appeal, if acquitted; choosing B (if the Attorney's bill gets through) virtually exposes the accused to retrial. I do not accept that it is a clear unequivocal presentation of justice—

The Hon. R.R. Roberts interjecting:

The CHAIRMAN: Order, the Hon. Ron Roberts!

The Hon. IAN GILFILLAN: —when no-one has argued that the status of the court, judge and jury, is any higher than a court presided over by a judge alone. The expectation is for the proper execution of justice and the expectation of justice. This bill notches down several notches in status. If this bill is successful, it should be recognised that trial by judge alone is no longer an equivalent court of law with the same expectation of our traditional system of justice as trial by judge and jury. If it is not presented in that way, starkly and clearly, then it is a misrepresentation of legal fact.

An honourable member interjecting:

The Hon. K.T. GRIFFIN: It is not downgrading trial by judge alone. Let's face it—

An honourable member interjecting:

The Hon. K.T. GRIFFIN: It is not downgrading it.

An honourable member interjecting:

The Hon. K.T. GRIFFIN: If you are trialled by judge alone—one person—and there is a mistake made, and it is a glaring mistake, I do not think it is defensible to argue that, in those circumstances, there should be no right of appeal in the Crown.

An honourable member interjecting:

The Hon. K.T. GRIFFIN: It is not.

The Hon. A.J. REDFORD: What the honourable member has overlooked in this case, is that the accused person gets legal advice. The advice in respect of this choice usually is given before arraignment because the accused, under the rules of court, are required to make the election prior to being arraigned. For those who do not understand what the term 'arraignment' means, it is when the accused is first brought before the superior court, the charge is read out and the accused enters the plea of either 'guilty' or 'not guilty'.

The decision whether or not to have a trial by judge alone or a trial by jury is made prior to the entering of a plea. The reason the rules exist in that form was to prevent defendants from shopping around and looking for what they might perceive to be a judge more likely to acquit than another. So, when the accused is in the position of making that decision, he does not know what judge he is going to get, and he will get advice in every case. The courts go to some trouble to ensure that even an accused person who is not represented gets that advice. I do not know of any case in this state where an accused person has not got that advice. I have to say, the advice that I give to an accused goes something along these lines, and that is—

The Hon. Ian Gilfillan interjecting:

The Hon. A.J. REDFORD: The Hon. Gilfillan interjects; he has spent a long time living off the public purse. I made a fairly successful living as a lawyer because clients did stick with me. The advice that is given is: first, you do not know which judge you are going to get. There are in excess of 20 judges in the District Court and there are 14 judges in the Supreme Court. In most cases, the accused is really interested in only one thing, that is, 'What is my best option so that I can be acquitted?' If this legislation gets through—and I hope it does—the advice will go something along these lines: 'If you go for a judge alone and you are acquitted, there is a risk of an appeal; if you go for a jury alone and you are acquitted, there is no risk of an appeal.' The accused will then make his decision in the light of that advice.

I am on the record as saying that I do not believe in judge only trials; they are an awful thing. Every judge I have ever spoken to hates with a passion trial by judge alone. They work and live in the system; they know their own idiosyncrasies as well as the profession—even more so in some cases. They know the strength of the jury system. When you talk to the judges, whether they be from the Supreme or the District Court (and I invite members, when they are at functions, to talk to judges), you will hear them say that. They will say, 'I don't like trial by judge alone.' If they were sitting in this place, they would never vote for the concept of trial by judge alone. In that respect, as I have said, this may have the consequential effect of substantially diminishing the concept of trial by judge alone, and that is a welcome development.

At the end of the day—and I know that on earlier occasions Robert Lawson has disagreed with me—it is my view that the legislation to bring about trial by judge alone is fundamentally misconceived. When introducing the legislation, the then Attorney-General said, 'I am giving a right to the accused.' The fact of the matter is that trial by jury is a right not of an accused person but of the community to participate in the criminal process and in the criminal justice system. It is the right of the community to impose its assessment of its values as represented by 12 people making a unanimous or near unanimous decision to impose its standards and will on the criminal trial process. It is not the right of an accused to say, 'I want 12 people.' I know the Hon. Robert Lawson has a different view from mine on that issue. What this parliament did when it established trial by judge alone is that it diminished the right of the community to be integrally involved in the criminal justice system.

At the end of the day, if one goes and asks people in the community who have served on a jury about their confidence in the justice system, one finds that they speak highly of the criminal justice system. I rarely speak to someone who has served on a jury who does not come out saying, 'I think it was a good process; I think it is a fair process.' The use of the jury enhances the confidence of the community in the criminal justice system.

It is not unheard of—and I say this with the greatest of respect—for judges and even some lawyers to lose touch with ordinary human values and ordinary values of a community. A jury is constantly bringing into the courts those values of society. So, if the net effect of this is that accused people—legally advised, knowing the consequences, knowing the potential that even if they are acquitted by a judge alone it is subject to appeal—seek to abandon the option of trial by judge alone, let us applaud it.

If one looks at the cases where trial by judge alone is chosen by an accused person, it is usually in cases that are what I would describe as macabre. I can think of one case in particular where a couple of mentally retarded people committed a particularly gruesome murder of a woman. The facts were quite distasteful. They chose to have a trial by

judge alone. I spoke to the lawyers involved and asked them why; and they felt that the facts were too gruesome for the jury.

I must say that I have some reservations about that attitude. One only has to turn on the television set on a daily basis to see some gruesome and macabre things happen nightly on our television screens in our own living rooms. I have great confidence in juries being able to deal with those issues. At the end of the day, if the net effect is to eliminate trial by judge alone, let us applaud it.

The Hon. Ian Gilfillan says that it is downgrading a trial by judge alone. That is not the case. The accused person has the option—not the state or anyone else. The accused person has that option. The accused person can make that decision in every case, properly advised. There may be occasions when they seek to have trial by judge alone in these circumstances. Parliament always reserves the right to revisit the issue. At the end of the day, the Attorney-General is quite right: he has been consistent about this since 1983. It has been part of our election platform for two consecutive elections, and it is pleasing to see that the Legislative Council is now potentially recognising that mandate.

The Hon. T.G. ROBERTS: We are debating what has been rolling around the community for some considerable time, that is, how the courts operate and whether they operate in a manifestly fair way. Some would believe in the French system, the inquisitorial system, rather than trying to tinker with the system that we have. Whether a trial by judge and jury or a trial by judge alone is fairer—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: No; there is a lot of argument about tinkering with our current system without looking at something completely revolutionary. Some consideration needs to be given to the statement made by the Hon. Angus Redford about juries. If we pick up the system that directs people to jury trials, many people now are not confident about going onto juries. They are looking at all ways possible to get out of jury duty. In many cases, it stems from the pressures that are imposed by the way in which choices are made. Some people do not understand why they are not suitable for jury duty; others get into the raffle and then get knocked out—they are not keen about that. They make provision—

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: I know, and I know how the lawyers like playing the system. The Hon. Angus Redford is probably a very good player; I would probably go to see him if I was in trouble. He is probably very good at playing the system, but that is what it is: it is a game that is played by lawyers at the expense of a lot of people in the system, and many people do not believe that the pressure placed on them is fair and reasonable. I know that the bill does not do anything about that, but some people would like to see some of those problems eliminated or at least some assistance given to jurors to make their job a little easier.

The Hon. A.J. Redford interjecting:

The Hon. T.G. ROBERTS: That is right, and I think where we are going now with the debate—and I suspect those who put the *Notice Paper* together did not think we would spend this much time on this clause or this bill—is a timely reminder out there about the way in which the trial systems are set up. I would like to make one request of the Attorney-General (and it does not have to be now; I will not hold up the bill), that is, how many people in the past financial year have been called for jury duty; how many have presented reasons or excuses for not wanting to go onto jury duty; and how many at the end of the day have been chosen?

The Hon. K.T. GRIFFIN: I will see whether I can obtain some information and give the honourable member an answer, which may best be presented during the debate on the juries bill.

The Hon. NICK XENOPHON: There has been some discussion this afternoon in committee about whether this proposed amendment downgrades the concept of a trial by jury. The Attorney denies that. My question is: does the Attorney concede that, if this bill passes, the practical effect of it is that it will be a strong disincentive for a defendant to go down the path of having a trial by judge alone by virtue of the fact that there is now an appeal process which does not exist in cases where there is an acquittal before a jury. It seems to me that that is axiomatic.

The Hon. K.T. GRIFFIN: I do not believe it is; I do not agree with the honourable member's assertion.

Clause passed.

Remaining clauses (2 to 4) and title passed.

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That this bill be now read a third time.

The Council divided on the third reading:

AYES (9)

Cameron, T. G.	Crothers, T.
Davis, L. H.	Dawkins, J. S. L.
Griffin, K. T. (teller)	Lawson, R. D.
Redford, A. J.	Schaefer, C. V.
Stefani, J. F.	

NOES (8)

Elliott, M. J.	Gilfillan, I.
Holloway, P.	Kanck, S. M.
Roberts, R. R. (teller)	Roberts, T. G.
Weatherill, G.	Xenophon, N.

PAIR(S)

Lucas, R. I.	Pickles, C. A.
Laidlaw, D. V.	Zollo, C.

Majority of 1 for the ayes.

Third reading thus carried.

Bill passed.

YOUNG OFFENDERS (PUBLICATION OF INFORMATION) AMENDMENT BILL

In committee.

Clause 1.

The Hon. R.R. ROBERTS: Members are aware that the Hon. Carolyn Pickles is off injured. Let me say that I have just received a file on this. Perhaps to expedite some of the debate, I say on behalf of the opposition that we are opposed to the principle of the bill. I make the observation that the bill is about 1½ pages and I note that the Attorney has some two full pages of amendments. We have had discussions with the Youth Affairs Council and others. My colleague the Hon. Carolyn Pickles has made most of the contribution points. I indicate to the Attorney-General that we will be opposing all the amendments.

The Hon. IAN GILFILLAN: The Democrats have had a chance to look at the quite extensive amendments moved by the Attorney-General. They do improve the operation of the bill, but the principle to which we are steadfastly opposed remains: that there will remain at the end of the day, even with the Attorney's amendment, the opportunity for the

publication of a juvenile offender's name and identifiable features in a documentary.

I cannot understand why there is any improvement in the result of a documentary, if a documentary is altruistically or objectively motivated, in broadcasting the personal identification of the offender. I can, however, see long-term damage that the juvenile offender and his or her guardian may in no way have conceived at the time when they gave the original consent. The potential damage outweighs any possible advantage there can be to the community at large.

The only advantage may well be to the prurient interest of the documentary and, therefore, to the financial reward to the documentary maker. A documentary can be deeply effective with anonymity. It can still include non-identifiable detail that applies to the case or the person involved. So, we will be opposing, and will seek to divide on, the third reading because we are implacably opposed to the principle and the consequences of the bill.

However, we will support the amendments and there will be no need for the Attorney to put argument in the committee stage to persuade us that the amendments as put on file are acceptable. They do to a small degree improve the working of what I regard as a quite unacceptable piece of legislation.

The Hon. T. CROTHERS: I find the amendments acceptable. I listened carefully to the Hon. Mr Gilfillan's contribution in respect of these matters. I think he is talking about juvenile offenders. I can well recall—and I am not that old—when the age of consent was 21. I can recall that it used to raise a great furore in Britain when one could be conscripted into the British Army at 18 yet one was not regarded as being an adult in the eyes of the law until one was 21. I know that there are other people in this chamber who, like me, are former citizens of the United Kingdom and who would remember precisely what I am talking about.

The Hon. T.G. Roberts: Australia was the same.

The Hon. T. CROTHERS: Yes, I believe it was. The difficulty I have and the reason why I will be supporting the Attorney is simply this: we have since the Dunstan era reduced the age of attaining majority from 21 to 18 and our citizens now have the right to vote at 18. Indeed, if I recall the last time conscription was in here, for the Vietnam conflict, the conscripts had to be 18 or more before conscription applied. The problem I have is this. I understand the principle of what the Hon. Mr Gilfillan is objecting to. The difficulty I have is that as society changes—

The Hon. T.G. Cameron interjecting:

The Hon. T. CROTHERS: You wouldn't have survived if I had been serving with you!

The Hon. R.R. Roberts interjecting:

The Hon. T. CROTHERS: Neither of the two of us would have survived if you had been serving with us, knowing what you know now! If we as legislators always recognise events of 10 years behind us rather than events in the here and now and the next five years, we will always be a reactive parliament, a reactive legislature, rather than an active one. One has only to look at the spate of home invasions, the spate of car thefts and the people who are being killed. It seems to me, for whatever reason—and I blame the media to a fair extent—that the moral character of our youth today is much less than it was 20 years ago. The Hon. Mr Roberts shakes his head, and I agree with him, because his moral character decayed years ago! He did not have to wait until today.

I am being honest now. I am not being politically correct. I am addressing this question and the argument as to merit. I have no doubt that today, for whatever reason, the standard of morality amongst society as a whole, not just our youth—

The Hon. T.G. Roberts interjecting:

The Hon. T. CROTHERS: I will not come near you again. I understand that the morality of our society as a whole has diminished, but it has diminished amongst our youth as well. I largely blame the media for that, and I largely blame unemployment, where the youth of today have no hope for the future—atomic weapon, call it what you want. The facts are—

The Hon. T.G. Roberts: There's no political leadership.

The Hon. T. CROTHERS: Well, you ought to know. You would be talking from experience from the party you are in!

The Hon. T.G. Cameron: I think you had better give this up, Terry!

The Hon. T. CROTHERS: I think he should. He is 3-0 behind already. But I am ready. I have my goal scoring boots on today. This legislation might play a role as a deterrent. I think that is the aim of the legislation, or at least in part. It might play a role as a deterrent. For those of us who do not believe in physical violence, we well remember the stories that were told about the larrikin squad set up by the police with respect to Hindley Street in the days of the bodgies and widgies. That had an effect, even though it operated somewhat outside the law.

It is not without insignificance that all empires in history, before they fell, became soft, flabby and decadent. It just seems to me that, the more we want to toe the politically correct line of organisations that represent particular areas of their interest, the more we sway away from good governance. Unfortunately, that is what is happening right throughout the western world and in other parts of the world. The art of good governance is being lost in the interests of political correctness.

I am very pleased to support the bill, simply because I think it may well have some role to play with respect to this younger generation. I have 12 grandchildren, and I have a son who died from a drug overdose, so I have some inkling of what I am talking about. I think it will assist in part in making the members of the younger generation more responsible for their actions, and perhaps for some they will act with better intent than is currently the case. But anyone who tells me that the moral fibre of our society as a whole has not changed for the worse over the past 20 years is simply whistling in the wind, as far as I am concerned. I support the Attorney's bill. But he was going to amend his amendment—

An honourable member interjecting:

The Hon. T. CROTHERS: You were.

The Hon. T.G. CAMERON: I will be relatively brief, because I made a contribution during the second reading debate.

Members interjecting:

The CHAIRMAN: Order! I cannot hear the Hon. Terry Cameron.

The Hon. T.G. CAMERON: It's all right, I don't mind talking to myself.

The CHAIRMAN: Hansard has to hear you.

The Hon. T.G. CAMERON: I do it all the time—as has just been pointed out. I had a careful look at this bill when it was first introduced. Whilst I made no reference to this in my second reading contribution, I originally had some concerns and, if my memory serves me correctly, I contacted the Attorney-General's office and asked for information—either it was that or he just sent it to me, anyway. I was glad that he

did so, because I was able to read the concerns as outlined by the Youth Affairs Council. Representatives of the council had written to the Attorney. I cannot recall receiving any correspondence from them, but the Attorney provided me with a copy of their correspondence and, in particular, gave me a copy of his responses to them—in fact, I received a copy of all YACSA'S letters and all the Attorney's correspondence.

It was the reasoned arguments (and I will not go through them now) in the Attorney's responses to the Youth Affairs Council's correspondence and concerns that eventually convinced me on this matter. So, I will be supporting the bill. I have had a look at the amendments and, whilst I do not profess to be a lawyer, I will be supporting all the Attorney's amendments, unless I am persuaded to the contrary during the committee debate.

The Hon. NICK XENOPHON: I have a number of questions of the Attorney which perhaps I could deal with in this clause in terms of some concerns I have. I understand the thrust and the principles behind the bill, and I also take on board the concerns of the Democrats and the opposition.

One of my concerns relates to chequebook journalism. For instance, there could be an instance where a media organisation is keen to pay a significant amount of money for a documentary, for whatever reason, and a minor is involved—a 13 or 14 year old, or whatever—and is going through the courts, and it could be that the parent or guardian of that minor is in some way influenced by an offer of cash. I note that the amendments made by the Attorney are clearly an improvement on the original bill but my concern is that, in cases where an offer of remuneration or a consideration of any type is being made by a media organisation, it could unduly influence the parent or guardian and, indeed, the young offender to participate in a documentary, notwithstanding that it may be harmful in the longer term—I am not saying that it is necessarily harmful in all cases for publication to take place. That is one of my initial concerns.

The Hon. K.T. GRIFFIN: Let me deal briefly with the issues raised by the honourable members. In reply to the Hon. Trevor Crothers, the object of the bill is twofold. It is to deal with the issue of deterrence—

The Hon. T.G. Roberts: Are you going to deal with the death of innocence?

The Hon. K.T. GRIFFIN: No, I will not get into philosophy at the moment. The bill is designed, in one respect, to address the issue of deterrence by presenting accurate information publicly about the way in which the system operates. If people know how the system operates, there is likely to be a better understanding of the potential for both correcting the behaviour of a young offender and making that young offender a better citizen, as well as to help the community understand that the system is not delivering mere slaps on the wrist.

In relation to the Hon. Mr Gilfillan, who asked why a young person should be identified in a documentary, I draw his attention to the second paragraph of the second reading report, which highlights the provisions in section 13 of the act and indicates why there are difficulties in not providing for some form of identification. Section 13 provides that a person must not publish a report of any action taken against a youth by a police officer or a family conference if that report identifies or tends to identify the youth, victim or other person to the action or proceeding. That is the emphasis: it is not just the youth.

Section 13 also provides that a person employed in the administration of the act must not divulge information about a youth against whom any action or proceedings have been taken except for official purposes. That is another impediment.

Section 63C of the act provides that a person must not publish or report proceedings in which a youth is alleged to have committed an offence if the court prohibits the publication of the report or the report identifies or tends to identify the alleged young offender or any other youth involved in the proceedings as a witness or a party.

I suggest that the present provisions are quite restrictive, and the government's objective is to give some greater level of flexibility, but for very limited purposes. I would have thought that it was quite appropriate to address the issue in the way that is set out in the bill and with the amendments that pick up a number of the issues raised by the Hon. Mr Gilfillan and others.

In relation to the Hon. Mr Xenophon's questions about chequebook journalism, I advise that the requirement to obtain an order from the Youth Court for publication was introduced to diminish the potential threat of chequebook journalism. While the youth and his or her guardian may agree to the publication of the youth's identify in a report of family proceedings or action taken by a police officer on the basis of financial reward, it is still necessary to convince the Youth Court of the merits of the application.

In this regard, the bill expressly provides that the court must take into account the impact on the youth of the publication of the report, the purpose to be served by the publication of the report, whether the publication of the report is necessary for the purposes of the documentary or project, considerations of public interest and any other matter that is in the court's view relevant, and that is a proposed amendment that I have on file.

In addition, my amendments on file make it clear that the welfare of the youth will be the paramount consideration of the court. Therefore, it is clear that simple agreement by the youth and his or her guardian about which the honourable member is concerned may be the subject of a commercial transaction—a financial incentive, in other words—will not be sufficient on its own to authorise a documentary filmmaker or researcher to identify a young offender in a report of proceedings relating to a family conference or action taken by a police officer. So, we have endeavoured to address that in a number of safeguards that we are proposing to build into the legislation, and ultimately the Youth Court will have the final responsibility.

The Hon. NICK XENOPHON: Will the Attorney indicate whether he considers that the bill and the amendments in their current form would allow for some latitude if, for instance, a decision were made to publish information about proceedings but it was decided to suppress the name of the young offender and to block out the young offender's features? In other words, you get a pretty good idea of what is going on in the court during the proceedings but the young offender's identity is disguised and remains anonymous.

The Hon. K.T. Griffin: That is a discretion of the court, ultimately.

The Hon. NICK XENOPHON: But is the Attorney satisfied that the bill in its current form allows for those permutations of publication?

The Hon. K.T. Griffin: Yes.

The Hon. NICK XENOPHON: Given the Attorney's responses, I am inclined to support the bill together with the amendments. Clearly, the amendments are an improvement on the original bill. I would not have been inclined to support

the bill in its original form. I think that the Hon. Ian Gilfillan deserves some credit, notwithstanding his consistent opposition to the bill, in effect for instigating the bill's improvement to its current form.

Clause passed.

Clause 2 passed.

Clause 3.

The Hon. K.T. GRIFFIN: All my amendments relate to clause 3; they deal with different issues. In light of the indications of support for the amendments, it might just facilitate the way in which we deal with it if I move them all and speak to them all.

The CHAIRMAN: All members are happy for the amendments to be dealt with cognately.

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

Page 1—

Line 21—Leave out 'information relating to' and insert:
a report identifying

Line 24—After 'guardian of the youth' and insert:
('the consenting guardian')

Line 24—Leave out 'information' and insert:
report

Page 2—

Line 6—Leave out 'this section' and insert:
subsection (1a)

Line 6—Leave out 'take into consideration' and insert:
regard the welfare of the youth as the paramount consideration and, to that end, must take into account

Line 8—Leave out 'information' and insert:
report

Line 9—Leave out 'information' and insert:
report

Line 10—Leave out 'information' and insert:
report

Lines 16 and 17—Leave out proposed paragraph (a) and insert:

(a) an order permitting publication of the report as part of the documentary or project subject to—

(i) a condition that the youth and the consenting guardian are to be given a reasonable opportunity to view the documentary or project after its completion but before its release to the public; and

(ii) a condition that, if the documentary or project is so viewed, it must not be released to the public until at least 30 days after the viewing; and

(iii) such other conditions (if any) as the Court thinks fit; or

After line 19—Insert new subsections as follows:

(1g) The youth or consenting guardian may, at any time before the release to the public of a documentary or project the subject of an order under subsection (1f)(a), apply to the Court for revocation or variation of the order on the ground that the report included or to be included in the documentary or project of the proceedings under this Part

(a) is not a fair report of the proceedings; or

(b) includes material not in the contemplation of the Court at the time the order was made,

and that the release to the public of the documentary or project while it contains that report would prejudice the welfare of the youth.

(1h) If an application for revocation or variation is made under subsection (1g), the documentary or project must not, while it contains the report to which the application relates, be released to the public until the application has been determined or withdrawn.

(1i) The Court must give the following persons reasonable notice of the time and place of the hearing of an application under subsection (1g):

(a) the youth; and

(b) the consenting guardian; and

(c) the person who was the applicant for the order sought to be revoked or varied.

(1j) On completing the hearing of an application under subsection (1g), the Court may make any of the following orders:

(a) an order revoking the order the subject of the application; or

(b) an order varying or revoking any condition of the order or imposing a new condition; or

(c) an order refusing the application; or

(d) any ancillary order it thinks fit (including an order as to costs)

Line 24—Leave out '(1f)(a)' and insert;
(1f) or (1j)

After line 24—Insert new paragraph as follows:

(d) by inserting after subsection (4) the following subsection:

(5) For the purposes of this section, a documentary or project is released to the public when it is released for viewing by persons other than those involved in the making or undertaking of it.

The amendment to page 1, line 21 is a drafting amendment. It will ensure that the terminology used in the provisions of the bill is consistent with the existing wording of section 13. The amendment to page 1, line 24 is a drafting amendment. The amendment to page 1, line 24 is consequential to the first amendment. The amendment to page 2, line six is a minor drafting amendment. The amendment to page 2, line six ensures that, when determining an application under proposed new subsection 1A, the court must give paramount consideration to the welfare of the youth. It was never intended that the interests of the youth would be overridden by other factors.

This amendment will make this clear by ensuring that the court gives paramount consideration to the interests of the youth. The amendments to page 2, lines eight, nine and 10 are all consequential upon the first amendment. With respect to the amendment to page 2, lines 16 and 17, as identified during the second reading debate the bill currently does not allow a youth or a youth's guardian to seek revocation or variation of an order permitting publication of the report in appropriate circumstances. Members will notice that my amendment will address this deficiency by giving the youth or consenting guardian a right to apply to the youth court for the variation or revocation of the order in certain circumstances.

To make this right meaningful, it is necessary to ensure that the youth and the consenting guardian are given a reasonable opportunity to view the completed documentary or project before its publication. It is equally necessary to ensure that the youth and consenting guardian have a reasonable opportunity to consider whether to make an application for the revocation or variation of an order and, if necessary, to lodge such an application before the documentary or project is actually established. This amendment provides that where the court makes an order permitting publication of the report that will identify the youth as part of the documentary or project.

There will be two mandatory conditions as part of the order: first, there will be a condition of the order that the youth and the consenting guardian are given a reasonable opportunity to view the documentary or project after its completion but before it is released to the public. Secondly, it will be a condition of an order that if a documentary or project is viewed by the youth and guardian it must not be released to the public until at least 30 days after that viewing.

I refer to clause 3, page 2, after line 19. As I alluded to in relation to the previous amendment, this amendment will introduce a procedure that will recognise a youth or consenting guardian's right to apply on certain grounds to the court for revocation or variation of an order made under section 13 at any time before the release of the documentary or project

to the public. The youth or consenting guardian will need to show either of the following:

1. The report to be included in the documentary or project is not a fair report of the proceedings, and the release to the public of the documentary or project while it contains that report would prejudice the welfare of the youth; or

2. The report to be included in the documentary or project includes material not in the contemplation of the court at the time the order was made and the release to the public of the documentary or project, while it contains that report, would prejudice the welfare of the youth.

The amendment will also restrict public release of the documentary or project while it includes the report until an application for revelation or variation has been determined. The youth, the consenting guardian and the applicant for the original order will need to be given reasonable notice of the hearing and the court will be empowered to:

1. Revoke the order permitting publication;

2. Vary or revoke an existing condition in the order or impose a new condition in the order; or

3. Refuse the application.

The court will also be able to make any ancillary orders that it sees fit.

Clause 3, page 2, line 24 is consequential to the amendments to clause 3, page 2, line 16 and after line 19. Clause 3, page 2, after line 24, is an amendment that is consequential to the amendments to clause 3, page 2, line 16 and also after line 19. Those amendments impose conditions that must be met before a documentary or project containing a report is released to the public and in certain circumstances restricts the release to the public. This amendment will provide that a documentary or project will be taken to be released to the public when it is released for viewing by persons other than those involved in the making or undertaking of it.

Amendments carried; clause as amended passed.

Title passed.

The Hon. K.T. GRIFFIN (Attorney-General): I move:

That this bill be now read a third time.

The Council divided on the third reading:

AYES (9)

Cameron, T. G.	Crothers, T.
Dawkins, J.S.L.	Griffin, K. T. (teller)
Laidlaw, D. V.	Redford, A. J.
Schaefer, C. V.	Stefani, J. F.
Xenophon, N.	

NOES (6)

Elliott, M. J.	Gilfillan, I.
Kanck, S. M.	Roberts, R. R. (teller)
Roberts, T. G.	Weatherill, G.

PAIR(S)

Davis, L. H.	Pickles, C. A.
Lawson, R. D.	Zollo, C.
Lucas, R. I.	Holloway, P.

Majority of 3 for the Ayes.

Third reading thus carried.

Bill passed.

JURIES (SEPARATION) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 24 May. Page 1109.)

The Hon. R.R. ROBERTS: The opposition supports the second reading of this bill. However, the opposition—through my colleague, Mr Michael Atkinson—is currently considering a number of amendments. I understand that it has been agreed that we will conclude the second reading and then adjourn. Nevertheless, the opposition is eager for the bill to pass the second reading stage. I note that the Attorney has his own amendments on file.

The opposition appreciates the intent of this bill, which seeks to introduce a level of commonsense with regard to the separation of juries. Of course, there is no question here about the need to ensure that juries are free from interference or contamination from influence external to the jury process, such as the media, partners and relatives. However, the cause for this legislation lies in the existing Juries Act 1927 which allows juries to separate only prior to deliberations. This presents an obvious problem because jurors have private lives and have responsibilities after the commencement of deliberations. New South Wales and Victoria have recognised this anomaly and have introduced legislation to enable juries to separate during their deliberations.

The Law Society, which is generally supportive of this bill, has made the following comment:

> The committee agrees that an amendment is desirable so as to meet wholly exceptional circumstances but wishes to stress that any such amendment should make it plain that such a course is wholly exceptional and should not be adopted without the most anxious and careful consideration.

The Law Society has highlighted a number of its concerns and, in doing so, has proposed an alternative model for the Attorney's consideration. Has the Attorney responded to the Law Society on the subject of its submissions? The opposition supports the second reading of the bill.

The Hon. K.T. GRIFFIN (Attorney-General): I thank honourable members for their indications of support for the bill. There are some extensive amendments to be dealt with in committee. In terms of the issue raised by the Hon. Ron Roberts, I will respond during the committee stage.

Bill read a second time.

DEVELOPMENT (SYSTEM IMPROVEMENT PROGRAM) AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 12 April. Page 918.)

The Hon. T.G. ROBERTS: I indicate that the opposition will be supporting the main thrust of this bill, but we are waiting for some amendments from the Democrats which we will consider, and we will make our decisions finally in committee.

The Hon. Diana Laidlaw interjecting:

The Hon. T.G. ROBERTS: At this stage we have no amendments in the upper house. We will be considering the Democrat's amendments and then perhaps some will be considered at a later date in another place.

The government commissioned a report in 1998, appointing Ms Bronwyn Halliday to undertake a customer survey of the administration of the planning and development system through the Development Act. Since the Development Act was introduced in 1993 a number of amendments have been made to that original act, and this is another set of amendments that the government found necessary to introduce. It set some of the targets after analysing the results of the survey taken by Bronwyn Halliday.

A report was released in April 1999, and the bill concerned itself with two major themes from a review: first, the need to further integrate the development assessment system more effectively and completely—in particular, making provision for a single assessment, one-stop shop process for more development activities—and, secondly, the need to improve rules and processes so that there is a greater certainty and faster decision making, both within the state government and local governments. The consultation process resulted in these concerns, which are listed mostly by local government and other stakeholders.

The concerns were: the proposed increase in the minister's ability to call in development applications for a decision to be made by the Development Assessment Commission, which gave the minister considerable power; the introduction of private certification for complying kinds of development; proposed amendments to the ERD Court Act in relation to unwarranted third party proceedings; response to these concerns led to a joint working party with Planning SA and the LGA, with the objective to

reach common ground; the government's response being the deletion of the reference to additional ministerial call-in criteria and private planning certification; and third party appeals being redrafted to specifically target ERD Court proceedings where commercial competitors have a commercial competitive interest. There was the consultation process in relation to the Roads (Opening and Closing) Act and the Native Vegetation Act. Integration Act and regulation amendments were included as a schedule in this bill.

Major provisions of the bill included sections 24 to 29 of Development Act relating to the length of time taken for most amendments to a development plan to be authorised; and an increased emphasis on a statement of intent to prepare an amendment—agreed upon by the council and the minister, the council having to provide a comprehensive certificate (signed by council CEO) when placing the PAR on public record and again when submitting authorised draft plan amendments to the minister. There are a number of other provisions in the bill on which I will not elaborate at this stage. I look forward to the committee stages of the bill.

The Hon. SANDRA KANCK secured the adjournment of the debate.

CRIMINAL LAW CONSOLIDATION (SEXUAL SERVITUDE) AMENDMENT BILL

The House of Assembly agreed to the Bill with amendments, to which amendments the House of Assembly desires the concurrence of the Legislative Council.

ADJOURNMENT

At 5.54 p.m. the Council adjourned until Tuesday 30 May at 2.15 p.m.