LEGISLATIVE COUNCIL

Wednesday 19 September 1984

The PRESIDENT (Hon. A.M. Whyte) took the Chair at 2.15 p.m. and read prayers.

PETITIONS: X RATED VIDEO TAPES

Petitions signed by 70 residents of South Australia praying that the Council will ban the sale or hire of X rated video tapes in South Australia were presented by the Hons G.L. Bruce and Diana Laidlaw.

Petitions received.

PETITION: FIREARMS

A petition signed by 17 residents of South Australia praying that the Council will defeat any firearms legislation which is further restrictive; consider the effectiveness of present legislation; refuse further unwarranted increases in fees; and apply a significant part of the revenue gained to promote and assist sporting activities associated with firearms, was presented by the Hon. Frank Blevins.

Petition received.

PAPER TABLED

The following paper was laid on the table:

By the Minister of Consumer Affairs (Hon. C.J. Sumner):

Pursuant to Statute—

Trade Standards Act, 1979—Report on Administration of the Act, 1981-1982.

QUESTIONS

FREEWAYS

The Hon. M.B. CAMERON: I seek leave to make a brief explanation before asking the Minister representing the Minister of Transport a question about freeways.

Leave granted.

The Hon. M.B. CAMERON: From time to time I have cause to travel on the South-East Freeway, and I have no doubt that this problem occurs on any two lane carriageway where two lines of traffic go in the same direction. The most frustrating experience that one can have is to be stuck behind a car which is travelling at well below the prescribed speed limit, sometimes as low as 70 km/h, and which stays in the outside lane and proceeds merrily along its way.

If one flashes one's lights at drivers behaving in this way inevitably they slow down more because they are under the impression that they are probably travelling too fast. It leads to very dangerous driving on many occasions on the part of frustrated drivers who have to pass on the inside of these vehicles, often cutting in front of someone who is coming from behind and who is already trying to do the same thing. It can be extremely annoying and dangerous. This practice is not condoned in other countries of the world; it is an offence in England, Germany and most modern countries of the world.

This is an extremely bad habit on the part of many drivers, many of whom come from the metropolitan area and do not understand country driving, believing that they are still travelling in the metropolitan area. It is unfortunate that our drivers are not educated to avoid such behaviour.

Will this practice be banned, and will legislation be introduced to ensure that people keep to the inside lane except when overtaking? Signs are already there requesting that action, but people ignore them. So, the only course now is to make the practice an offence.

The Hon. FRANK BLEVINS: I have something of a personal interest in the Hon. Mr Cameron's question. If one researches *Hansard* one will find that from 1975 until I became a Minister I constantly asked questions about this same matter, with a spectacular lack of success. I failed. Someone with less backbone than I have would have given up. However, I am not the Minister of Transport, unfortunately as regards this topic, and I can do no more than refer the honourable member's question with a great deal of vigour to the Minister of Transport in another place and bring back what perhaps on this occasion could be the reply for which the Hon. Mr Cameron is looking.

SCIENTOLOGY

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Attorney-General a question about scientology.

Leave granted.

The Hon. J.C. BURDETT: On Tuesday 11 September 1984 I asked the Attorney whether he would take steps to investigate the activities of the Church of Scientology outlined in my explanation to the question and, if he would, what steps he proposed. The Attorney responded that he was not willing at that stage to accede to my call for a formal inquiry; however, he said that he would see what level and nature of complaints had been made about the organisation to the existing agencies, and he would inform the Council of the result of these inquiries. I might add that since I asked that question I have been inundated with further complaints. What was the result of those inquiries?

The Hon. C.J. SUMNER: I am still awaiting the response from the departments concerned. I mentioned the Department of Public and Consumer Affairs, the Health Commission, and the Psychological Board in particular. I will make the information available to the honourable member as soon as it becomes available. He says that he has received further complaints about the situation; I would be pleased if he could pass details of those complaints to me or to the Minister of Health to enable us to determine whether any action is necessary.

MEDICARE

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

Leave granted.

The Hon. K.T. GRIFFIN: My question arises out of a report stating that Mr Justice Zelling in the Supreme Court criticised Medicare reimbursement of medical and hospital expenses incurred as the result of a motor vehicle accident. In the *News* of 13 September, Mr Justice Zelling stated that the Medicare legislation was a grave discrimination against badly injured people. The report states:

Handing down a damages award in a motor accident claim, Mr Justice Zelling said: 'A most unfair statutory provision provides that Medicare is not available where a plaintiff receives an award of damages.

When the award of damages was invested and produced income, it was taxed at 1 per cent to provide the usual contribution towards Medicare. A badly injured plaintiff ought to be just as entitled to Medicare refund once he pays his 1 per cent tax as any other citizen in the community.'

The point that the judge omitted to mention was that, in future when persons are injured at work or in other accidents and they have been paying their 1 per cent Medicare levy, they will be denied reimbursement if the expense is the subject of a claim for damages, probably on the basis that the insurer ultimately pays. It really should not matter how a medical or hospital account is paid, whether by an insurer or by the person who is injured, if it arises from an accident. In the light of the judge's comments, will the Attorney-General take up with the Federal Government the injustice in its present Medicare system in respect of accidents arising out of work or road accidents, and urge the removal of that discrimination?

The Hon. C.J. SUMNER: I concede that there is injustice in the situation. Presumably, the reason for Medicare's not applying to people who have received damages for personal injury is that normally included in the payment for damages is something for future medical expenses.

The provision, I assume, is to stop people obtaining, by way of a damages claim, the cost of future medical expenses and then again claiming through Medicare for those same expenses. That is the rationale behind the clause in relation to Medicare. It may be that the learned judge holds a different view of the situation. I will have his judgment forwarded to the Federal Minister for Health to ascertain whether or not that Minister believes that there is any injustice occurring in the situation that Mr Justice Zelling has outlined.

ETSA TARIFFS

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Minister of Agriculture, representing the Minister of Mines and Energy, a question about ETSA tariffs.

Leave granted.

The Hon. I. GILFILLAN: It is ironic that, after months of attempts by many people to persuade this Government that there should be more emphasis on conservation of energy, ETSA has faced the most unfortunate circumstance of a massive increase in insurance premium, plus an unfortunate massive increase in the price of gas. This is the only incentive which appears to have brought some response from the Minister. I have been informed that his Department has not even acknowledged three letters from the President of the Conservation Council, representing that council, promoting conservation instead of irresponsible use of power in this State. I hope that this is the start of what might well be a change of attitude by the Minister and the Government as to the way electricity should be used.

The suggested procedure of inverted tariffs we expect will have some benefit on the actual use of electricity in South Australia. I suspect that it may very well be the start of such a change in power use (without diminishing the standard of living in South Australia) that the question of extra power capacity in South Australia could be changed dramatically. I will be asking questions on the tariff structure because there is an alternative to the inverted system called the 'two-tiered system' in which any connection (house, domestic or industrial) pays a flat annual charge rated on the kilowatt capacity of the connection. In such circumstances those houses or industries that are linked in for a very high capacity of electricity use will contribute substantially to the capital cost of providing that power.

Everyone can understand that it is not necessarily the rate at which electricity is used day by day so much as what a peak demand could be which determines whether or not this State spends millions of dollars increasing capacity unnecessarily, resulting in all power users eventually having to pay for that. I will be asking the Minister to look at this suggestion as an alternative and to take this matter very seriously. My questions are:

1. Has the Minister considered a two-tiered system of electricity charges with one tier being based on the kilowatt capacity of the connection?

2. Does he recognise that such a tariff system would be a strong incentive for power conservation?

3. What does the Minister estimate will be the power saved using an inverted tariff system as he is proposing?

4. Will the saving from this inverted tariff and other measures of conservation have any effect on the need for future power generation in South Australia?

The Hon. FRANK BLEVINS: I will refer that question to my colleague in another place and bring back a reply.

MUNNO PARA COUNCIL

The Hon. DIANA LAIDLAW: I seek leave to make a short explanation before asking the Minister of Health, representing the Minister of Local Government, a question on the Munno Para council boundaries.

Leave granted.

The Hon. DIANA LAIDLAW: In the *Advertiser* this morning I was interested to note a statement by the Minister of Local Government in respect to a bid by the Elizabeth council to amalgamate with the Munno Para council. Referring to the Minister, the article stated:

If any bids were made he would make a submission to the [Local Government Advisory] Commission 'seeking that no adjustment be made to Munno Para boundaries such as would prevent the council continuing its existence as an economic and well based unit of local government'.

It is clear from this statement that the Minister and the Government have determined that Munno Para should remain an entity in its own right, notwithstanding the outcome of a petition earlier this year in favour of amalgamation with Elizabeth and irrespective of any further moves by Elizabeth. This disclosure of the Government's position is enlightening in view of a letter that has been sent to ALP members of this Parliament dated 13 September from the Chairman of the Munno Para council who, incidentally, is also the President of the Napier Sub-branch of the Australian Labor Party. I received a copy of this letter from an unusual source, but certainly I was not among the individuals in this Parliament to receive an original copy. The letter, in part, states:

I write to you as President of the Napier Sub-branch of the Australian Labor Party and Chairman of the District Council of Munno Para.

I appeal to you to give your support to a Labor controlled council, the District Council of Munno Para as against a Liberal controlled council, the City of Elizabeth—

despite the political complexion of the Mayor—

who may have a Labor Mayor and some councillors who purport to be Labor but are not members of the Labor Party whereas, in our case, most members are card carrying members of the Australian Labor Party.

The Hon. R.J. Ritson: This is politics at the local government level.

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: I know. Did the Minister and the Government allow the highly Party-political plea from within local government at Munno Para to influence

its decision that Munno Para should remain, irrespective of the validity of any argument to the contrary?

The Hon. J.R. CORNWALL: On this side of the Chamber we do not believe that this rather base political nonsense should be carried on with. I think it does the Hon. Miss Laidlaw little credit to try and stir unreasonably in what is a difficult and sensitive matter. I strongly believe that the Minister of Local Government has taken a position that is very much middle-of-the-road and responsible, and he has made every reasonable effort to achieve some sort of consensus in a very difficult area. The Hon. Miss Laidlaw does the citizenry of that part of the metropolitan area no good at all. I am surprised that somebody like the Hon. Miss Laidlaw should try and create mischief. It is not in the best interests of the residents of that area—

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R CORNWALL: —for the Hon. Miss Laidlaw to try and foment trouble in a sensitive and difficult area. As to the remainder of the question, I will refer it to my colleague, the Minister of Local Government in another place, and bring back a reply.

VIDEO CENSORSHIP

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Attorney-General a question about video censorship.

Leave granted.

The Hon. R.I. LUCAS: On 11 September in this Chamber the Attorney-General stated:

> As the South Australian Minister responsible in this area I also argued at the April meeting of Ministers responsible for censorship for a tightening up of the guidelines particularly relating to violence.

It is interesting to note that the views of the Commonwealth Chief Censor (Mrs Janet Strickland) on that meeting in April were reported in the *Age* on 31 August. Mrs Strickland was responding to a question on Premier Wran's move to ban X rated videos, and the *Age* report states:

> He—
>
> Mr Wran—
>
> was saying the board is in part responsible for N.S.W. banning X rated videos,' Mrs Strickland said yesterday.
>
> 'I find that a little hard to understand. The N.S.W. Government was represented by Mr Landa at the last Ministerial meeting in April and the previous meeting in July last year, when guidelines for classifications of video tapes—including those for an X classification—were approved by all Ministers responsible.'

I repeat that:

> The guidelines for classification of video tapes—including those for an X classification—were approved by all Ministers responsible.

The Hon. C.J. Sumner: Who said that?

The Hon. R.I. LUCAS: Mrs Strickland, and she goes on to state:

> There seems to be some suggestion that we not only create the laws but we actually apply standards we somehow dream up. This totally overlooks the fact that the guidelines and the standards we apply are on behalf of the States, made after consultation with them.

Mrs Strickland is clearly putting the view that guidelines and standards were approved by all Ministers responsible at the April meeting. That is Mrs Strickland's view anyway of that April meeting and on the surface it appears to differ slightly from that of the Attorney as to his role at the meeting. Mrs Strickland also raised the question of the problem of lack of uniformity in video censorship laws and in this report she is quoted as stating:

> . . . differing State laws on X rated videos would help 'open the floodgates to a huge blackmarket'.

My questions to the Attorney are:

1. Does the Attorney-General believe that Mrs Strickland's summary of his view and that of all the Ministers at the April meeting is correct? In particular, I ask about the portion of the quotation that I repeated.

2. Does the Attorney concede that, if South Australia allows X rated videos and most other States do not, then a significant black market could develop with all its associated problems for South Australia?

The Hon. C.J. SUMNER: What I said is quite correct. I did argue, and argued very strongly, for a tightening up of the guidelines relating to videos at the April meeting of censorship Ministers. Mrs Strickland, at least in one respect, is incorrect if she has been quoted correctly by the honourable member or in the *Age* report by saying that the guidelines were approved by all Ministers responsible; at least two Ministers at the meeting indicated that they were unwilling to accept an X category, that is, the Ministers from Tasmania and Queensland. Other Ministers, including myself, accepted the compulsory system of classification, which I argued for at that meeting, following the debate in this Parliament that is on public record, and it was agreed that there should be compulsory classification of X rated videos, about which honourable members in this place did not complain when the matter was debated in December last year. It was on the basis of that debate that I argued for a compulsory system of classification, and that was approved. Also, I argued that there should be some tightening up of the guidelines, particularly in respect of violence, and the guidelines were in fact tightened up following the April meeting.

In particular, I referred to one film, *Blood Sucking Freaks,* which was given an R classification by the Commonwealth Film Censor. When the South Australian Classification and Publications Board looked at the film it refused to classify it because of its excessive violence. I argued that giving a film such as *Blood Sucking Freaks* an R classification was not taking a strict enough view of violence in videos or films. I think the general argument that I put was accepted, although some differences of opinion were expressed. The guidelines were altered to some extent at the meeting in April, and I certainly made clear to Mrs Strickland that I felt that the guidelines in relation to violence were not sufficient. It is true that the standards were discussed at the meeting in April; I have indicated that previously to the public. However, it is not true to say that the guidelines were universally approved by all Ministers, because at least two said they would not accept the X category.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: The honourable member has interjected again. I have already said that not only in this Chamber today, about 30 seconds ago, but I have also said it on previous occasions: I argued for a compulsory classification including X. That was the view taken by the majority of Ministers at the April meeting in Sydney. At that stage there had been little discussion about whether or not X rated videos ought to be available for hire or sale. It was raised to some extent during debate in this Parliament in December, but the argument at that time was about whether or not there should be a compulsory system of classification, and not so much about whether X should be banned.

Of course, as the honourable member knows, since the April meeting the New South Wales Government has decided to ban X; the Western Australian Government has decided to ban X, and join Queensland and Tasmania, who made their views known at the April meeting. As a result of that, the Premier of Victoria—supported by me—said that there should be another meeting of Ministers responsible for censorship. That meeting has been called for Friday week. Mr Cain expressed the view that what was originally to be a uniform system, or at least reasonably uniform except for the banning of X in two States, had now become disuniform.

He said that surely in this area it would be desirable to have a uniform system. I agree with him on that, if it is at all possible. Mr Cain expressed his concern about Victoria being one of the few States that had not banned X rated videos.

The question is difficult, as I outlined in the Council last week in response to a question from the Hon. Anne Levy. At the meeting on Friday week I will argue again for further tightening of the guidelines relating to violence. As I said in response to the Hon. Ms Levy, I think that the debate about censorship and about videos has changed. It has certainly changed, but I think that there has been a preoccupation with what I might term pornography—acts of sexual intercourse and activity between consenting adults. That has been the concentration of people in this area over the past few years. While that has been going on, a lot of explicit and quite horrendous violence has been allowed in.

I am trying to bring the debate back to where I think it should be: more concern being shown for the guidelines relating to violence. That was my argument at the April meeting, and I have given the example of one video which I mentioned earlier. I will argue it again on Friday week at the next meeting. The question of X rated videos is still to be considered by the South Australian Government. The issue is not as simple as perhaps some people might like to make it out to be. What happens if X rated videos are banned? Where do they go? The major problem with videos is that they can be easily copied and can be made available. If they are banned, is the result that that category of material is placed in a black market situation, which potentially involves criminal elements, or do we allow it to be sold in an open but regulated way? That is the issue.

Of course, the issue comes down to the consideration of an important principle: that there should not be control over people's actions or thoughts unless that control is justified in the interests of society because harm is being caused to other individuals or the society as a result of the actions that are being discussed. That is an important principle. I would have thought that all members of this Parliament, on either side, would have given some credence to that. The question is whether banning X will interfere with that principle and whether that interference is justified. The question then becomes: where does one stop? We then get back to the debate on censorship we have had in this country throughout the 1950s, the 1960s, and the 1970s when we were banning novels such as *Lady Chatterley's Lover*, and the like.

There is an important principle to be considered. I had tried to put that to Parliament and to the public on previous occasions. The Government is still considering the question of X. I think that the debate has gone off the rails a bit as a result of the concentration on sexual acts between consenting adults. The debate should now concentrate more on violence, and that is what I intend to do at the meeting in Melbourne next week. There is no real dispute between what Mrs Strickland said and what I have said. I do not think she was correct when she said it was approved by all Ministers responsible. I agree that if X is banned there is the potential—if that is what she is suggesting—for a black market to develop in X rated videos, and because it is a prohibited black market situation it then become's a problem of it getting into the hands of the criminal element.

PUBLIC ACCESS TO PARLIAMENTARY STATUTES

The Hon. B.A. CHATTERTON: I seek leave to make a short explanation before asking the Attorney-General a question about public access to Parliamentary Statutes.

Leave granted.

The Hon. B.A. CHATTERTON: A constituent raised a matter with me recently following discussions with the Corporate Affairs Commission on matters under the Corporate Code. After discussing various things included in the Corporate Code my constituent wanted to look at the actual Act of Parliament. He was informed that this was available from a commercial company that sells copies of the Code. However, they are fairly large and expensive. Apparently no copies were available for public perusal. Is it possible to have copies of Parliamentary Statutes available at the Corporate Affairs Commission office for people to look at if they do not wish to buy a copy from the company which sells them to the public?

The Hon. C.J. SUMNER: I will see whether the honourable member's request can be accommodated. The Code itself is not a Statute that has passed through the State Parliament; it is an Act that has passed through the Commonwealth Parliament, but I will see whether the honourable member's request can be acceded to.

HOSPITAL AND MENTAL HEALTH SERVICES

The Hon. J.C. BURDETT: I seek leave to make a brief explanation before asking the Minister of Health a question about general hospital and mental health services.

Leave granted.

The Hon. J.C. BURDETT: The *Herald* of June 1984, reporting on motions passed at the 1984 State ALP Convention over the Queen's birthday weekend, states—

The Hon. J.R. Cornwall: The Labor *Herald,* not the Melbourne *Herald*?

The Hon. J.C. BURDETT: The Labor *Herald,* yes. It says:

> Convention applauds the initiatives of the State Labor Government in instituting wide-ranging inquiries into the State's general hospital and mental health services. Whilst noting those developments we ask: 'Who cares for the carers?' To protect the occupational health of health workers, convention calls upon the Government to institute an inquiry into the occupational health of health workers, with particular emphasis on hitherto unresearched areas such as stress. We believe that such an inquiry should also recommend to the Government strategies for overcoming any health worker occupational health problems that are thus identified.

Has the inquiry been initiated? If so, what are its terms of reference?

The Hon. J.R. CORNWALL: The simple answer is 'No, not at this time,' but it is a matter to which I give very substantial importance, and as soon as the very busy officers of the Health Commission have got on top of the many dozens of other major tasks that they are addressing at the moment, including the formal responses to both the Sax and Smith inquiries, it would certainly be my intention during 1985 to establish such an inquiry.

SCHOOL CHAPLAINS

The Hon. ANNE LEVY: Has the Minister of Agriculture a reply to a question that I asked on 9 August through him to the Minister of Education on school chaplains?

The Hon. FRANK BLEVINS: A committee consisting of representatives of the Education Department and Heads of Churches has been examining the possible implications of allowing chaplains from religious bodies to have access to State schools. The committee's report has not yet been formally received or considered by the Minister of Education.

Presently, discussions are taking place between the Department and the Heads of Churches Committee. These discussions may result in recommendations being put to

the Government. The Minister of Education already advised the House of Assembly on 10 April 1984 that it is not his intention that any proposals that may be proceeded with will involve any cost to the Government. Nor is it proposed that any recommendations would be supported if they involved any disruption to class instruction time. There are, of course, other opportunities during the school day, such as lunch hours, recess time, free periods, elective periods, and the like, where any such activity may focus its attention.

It should be noted that similar provisions exist already in the Victorian and West Australian school systems. Similar provisions also exist in the Australian Armed Services, the universities, hospitals, prisons and in private industry.

PUBLIC HOSPITALS

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Health a question about the current position of public hospitals in South Australia.

Leave granted.

The Hon. L.H. DAVIS: Honourable members will recollect that under questioning earlier this year the Minister of Health expressed his confidence in the public hospital system in South Australia being able to withstand the introduction of Medicare. Flinders Medical Centre now appears to be functioning under extreme pressure. Often, on some days at 8 a.m., the occupancy rate of the hospital is in excess of 100 per cent. Patients on occasions lie around on barouches in passages, heavily sedated after an operation. There are simply no beds available.

This is not a management problem, but a shortage of beds. In one specialist area over a six-week period operations for 18 patients were cancelled because no beds were available. In some instances, the surgery was at least of a semi-urgent nature, and had to be rescheduled up to one month later. In another case a patient was admitted for an operation, scheduled for Monday; it was cancelled and rescheduled to Tuesday; it eventually took place on Friday. An entire operating list was cancelled at short notice, leaving highly paid staff standing idle.

One senior and respected staff member said that he and many of his colleagues had a feeling of utter frustration. They were stretching themselves further and further, without any sign of relief. He believed that it was inevitable that mistakes would occur, if they had not already, because of this pressure. Several medical staff believe that this extreme stress has resulted in a fall in the standard of patient care from medical and paramedical staff. There was also a strong view that members of the nursing staff are struggling to cope with this enormous pressure and that they are literally running to keep up.

In the Queen Elizabeth Hospital there has been a 4 per cent increase in in-patients and out-patients over the past financial year, and there are severe budgetary problems. At Modbury, orthopaedic consultants are seeing as many as 79 patients in a session, and averaging at least 50, when 25 to 30 patients would be a more appropriate load. Many highly qualified staff not only treat patients but also have a research and teaching function. Again, many of the staff are concerned that the teaching of interns is suffering as the workload continues to increase, and the research function is being disadvantaged. I could go on, but this evidence strongly suggests that the public hospital system in Adelaide is under severe pressure. Indeed, many within the system would argue that it is in crisis. I ask the Minister:

1. Does he accept the accuracy of the situation outlined in this question?

2. What steps has the Government taken to relieve the pressures on hospitals such as Flinders Medical Centre, which are having an adverse impact on the standard of patient care, staff morale and the research and teaching roles undertaken by staff members?

The Hon. J.R. CORNWALL: First, I will say at once that the scenario that the Hon. Mr Davis has outlined is a beat-up of monstrous proportions. I wonder where the Hon. Mr Davis was between 1979 and November 1982, when the previous Government attempted to cut the heart out of our great public hospital system. Not only did it attempt to cut the heart and the soul out of our great—

The Hon. J.C. Burdett: You are stabbing them in the back.

The Hon. J.R. CORNWALL: I did not ever criticise the hospitals; I criticised the conditions that were created by the actions of the Tonkin Government.

The Hon. R.I. Lucas: These must be created by you, then.

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: Furthermore, the then Minister of Health, Mrs Adamson, boasted about the cuts. Nothing was too big or too small. The bikkies were taken away from the morning and afternoon teas. Lights were switched off. Staff were encouraged to run up and down stairs instead of using lifts. It was an onslaught that did the then Government no credit, and it ultimately paid the penalty.

When we came to Government on 6 November 1982 my first action as Minister of Health was to go to Cabinet within three weeks and seek supplementation of $5 million for the battered budgets of this State's great teaching hospitals. The Bannon Cabinet granted that at once, and in fact the budgets of almost all of our major metropolitan public hospitals were supplemented at that time. Since then, a further $3 million has been injected into those major public hospitals. The position with regard to staff, staff morale and quality of patient care is significantly better, I am proud to say, in September 1984 than in October 1982.

The budgetary problem at the Queen Elizabeth Hospital to which the honourable member refers is a self-inflicted injury. Last year the Queen Elizabeth Hospital negotiated its budget, like all the other public hospitals. It was given what was considered an adequate budget within the overall allocations, remembering, of course, that those allocations in real terms were increased by $8 million from the last budget of the Tonkin interregnum. The hospital accepted that. However, in February this year it became obvious to senior officers in the Commission who were monitoring spending at the Queen Elizabeth Hospital that, unless responsible and rather urgent action was taken, the hospital would significantly exceed its budget allocation. We have a vastly improved system of financial reporting over and above that which was in place during the period of the Tonkin Government. Therefore, negotiations were undertaken immediately, and it was agreed with the administration and the board of the Queen Elizabeth Hospital that there should be $500 000 in budget supplementation.

Notwithstanding that, the situation continued to deteriorate, in spite of repeated assurances—and written assurances, I might add—from all those senior people that they would come in on target within the supplemented budget. In fact, at the end of the financial year the Queen Elizabeth Hospital had blown its budget by $1.3 million over and above the $500 000 that had been negotiated around the mid-term of the financial year.

Therefore, action has been taken by the Commission, the western sector and the Chairman of the Commission. We have refused to accept the carry-over of $1.3 million. We have accepted a carry-over of $700 000, but no appointments can now be made without the full concurrence of the financial

management and the Commission. Quite stringent conditions have been placed on the Queen Elizabeth Hospital. It is impossible to conclude that that very large overrun—in fact, an overrun of more than 2 per cent of the budget—could possibly occur unless there was incompetence or connivance. It is not possible for—

The Hon. L.H. Davis: You are saying that the administration of the Queen Elizabeth Hospital is incompetent; that is outrageous!

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: —me or senior Health Commission officers to say at this stage whether it is incompetence, connivance or a mixture of both. I can say, and I do say, that we will not tolerate any public hospital in this State, any recognised hospital for which the Commission has a responsibility, blowing its budget by that amount.

The Hon. L.H. Davis: What about Flinders? Will you talk about that now?

The PRESIDENT: Order!

The Hon. R.I. Lucas: You just smeared the QEH administrators.

The Hon. J.R. CORNWALL: The young Mr Lucas says that I have smeared the QEH administrators. What would the young Mr Lucas, in all his inexperience, say if I were to countenance a situation whereby a major hospital was allowed to blow its budget by something in excess of 2 per cent?

The Hon. R.I. Lucas: Don't accuse them of connivance.

The PRESIDENT: Order! There have been enough interjections. If honourable members want to ask supplementary questions, they may do so, but they must listen to the reply.

The Hon. J.R. CORNWALL: We will not permit that to happen. In regard to the Flinders Medical Centre, of which the Hon. Mr Davis made great play, I have said on dozens of occasions that the Flinders Medical Centre is under very severe pressure.

The Hon. L.H. Davis: So you build a Mickey Mouse place down in the south!

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: The Flinders Medical Centre is under pressure to the extent that I intend, as soon as reasonably possible in this financial year, to commission the additional 16 surgical beds that remain to be commissioned. That is a positive step, something that was certainly neither done nor contemplated during the period of the Tonkin Government. Furthermore, we intend to commission the eighth operating theatre, something which was neither done nor contemplated by the previous Government. Indeed, Mrs Adamson as Minister spent a great deal of time denigrating the administration of the Flinders Medical Centre which, of course, is a very fine teaching hospital.

The Hon. R.I. Lucas: She didn't accuse them of connivance.

The Hon. J.R. CORNWALL: She accused them of connivance a time or two, three or four, but certainly never of incompetence. I do not think that she would ever have been guilty of that.

The occupancy of Flinders has on occasion—as I have said publicly in this place and in many other places—particularly on a Monday following a busy weekend or an accident emergency, exceeded 100 per cent. I have freely admitted that. I have been concerned about the situation that I inherited ever since November 1982, and we are acting to correct it. Sixteen beds will be commissioned within the very near future; the eighth operating theatre will also be commissioned within the very near future—certainly before Christmas.

The Hon. L.H. Davis: Let's know where you said it.

The Hon. J.R. CORNWALL: It is in *Hansard* on numerous occasions.

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: I suggest that members opposite do their own research. I have certainly said that in this Parliament, and it is in *Hansard*. I have said it on several occasions. I have worked very hard to ensure that we are able to commission those additional beds. Again, the recommendation of the major Sax Committee of inquiry into South Australian hospitals, the most comprehensive survey ever done into a State hospital system in this country, is that a 100-bed public recognised hospital be built at Noarlunga. That will be done—

The Hon. C.M. Hill interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: —as stage 2—

The Hon. R.I. Lucas: Disgraceful!

The Hon. C.M. Hill interjecting:

The Hon. J.R. CORNWALL: You, Mr President, are not giving me much protection today.

The Hon. L.H. Davis: You don't need any protection. You don't deserve it.

The PRESIDENT: Order!

The Hon. C.M. Hill interjecting:

The PRESIDENT: Order! The Hon. Mr Hill must come to order, or I will name him.

The Hon. J.R. CORNWALL: This will be done as stage 2 of the very exciting Noarlunga Health Village complex, which is already being constructed and which was opposed tooth and claw by members opposite with all the vehemence they could muster both in Government and in Opposition.

Members interjecting:

The PRESIDENT: Order!

QUESTIONS ON NOTICE

ROXBY DOWNS PROTEST

The Hon. K.T. GRIFFIN (on notice) asked the Attorney-General: In relation to each person arrested during the current 'Roxby blockade':

1. What is the city or suburb of his or her address, the age and occupation of that person?

2. What offences have been charged, what are the dates of those offences, what convictions have been recorded, what charges are still outstanding and what penalties have been imposed?

The Hon. C.J. SUMNER: The replies are as follow:

1 and 2. This information as supplied by the Commissioner of Police is attached. Some of the particulars sought, including the age, occupation and address, are not available in respect of all persons charged due to the failure of this information being provided by the persons concerned. The following legend refers to the offences charged shown in an abbreviated form on the attached schedule:

Legend:

C.A.	Common Assault
C.L.O.	Criminal Law Consolidation Act (assault)
CO	Commonwealth Act
NCO	Narcotics Act
PO	Police Offences Act
	Section 7 Disorderly behaviour
	Section 17 Unlawfully on premises
	Section 17A Unlawfully on premises
	Section 18 Loitering
	Section 43 Wilful Damage
	Section 75 Suspected Person
RTO	Road Traffic Act

I seek leave to have the schedule inserted in *Hansard* without my reading it.
Leave granted.

ARRESTEE PARTICULARS

Address Town/Suburb	State	Age	Occupation	Offences Charged	Offence Date	Conviction(s) Recorded	Penalty	Charges Outstanding
Abbotsford	Vic	26	Scientific Officer	PO 17A	28.8.84	Convicted	40.00	Nil
Brunswick	Vic	21	Unemployed	PO 17A	24.8.84	Convicted	40.00	Nil
			Refused	PO 17A PO 75	28.8.84	Convicted	65.00	Nil
Red Hill	ACT		Student	PO 17A	5.9.84	Convicted	60.00	Nil
Richmond	Vic	19	Refused	CA	28.8.84			All
			Unemployed	PO 6 PO 6 PO 6	30.8.84			All
Brighton	SA	19	Nurseryman	PO 18	30.8.84	Convicted	25.00	Nil
East Brunswick	Vic		Refused	PO 17A	28.8.84	Convicted	50.00	Nil
			Refused	PO 17	3.9.84			All
Hamilton South	NSW	56	Refused	PO 17A	5.9.84	Convicted	60.00	Nil
Melbourne	Vic	19	Student	PO 17A	22.8.84	Convicted	40.00	Nil
Kensington	SA	29	Unemployed	PO 17A	6.9.84			All
Bondi	NSW	23	Environmentalist	PO 17A	24.8.84	Convicted	40.00	Nil
Forrest Lodge	NSW	19	Student	PO 17A	24.8.84	Convicted	40.00	Nil
Dulwich	SA	48	Unemployed Painter	CO	20.8.84	Convicted	10.00 Bond	Nil
			Unemployed	PO 17A	23.8.84			All
			Unemployed	PO 18 PO 75	30.8.84			All
			Unemployed	PO 17	2.9.84			All
Mile End	SA	17	Refused	PO 17A	30.8.84			All
Mile End	SA	40	Unemployed	CO	20.8.84	Convicted	10.00 Bond	Nil
			Unemployed	PO 17A	23.8.84	Convicted	40.00	Nil
Carlton	NSW	29	Unemployed	PO 17	22.8.84	Convicted	10.00	Nil
			Unemployed	PO 17A	24.8.84	Convicted	30.00	Nil
Parkville	Vic	21	Youth Worker	PO 17A	24.8.84	Convicted	40.00	Nil
Maralinga	SA	21	Student	PO 17A	22.8.84	Convicted	40.00	Nil
West Croydon	SA		Student	PO 17A	6.9.84			All
		25	Unemployed	PO 17A	24.8.84	Convicted	40.00	Nil
Bondi	NSW	29	Information Officer	PO 17A PO 17	2.9.84	Convicted	70.00	Nil
Ivanhoe	Vic		Refused	PO 17	22.8.84	Convicted	40.00	Nil
		27	Unemployed	PO 17A	24.8.84	Convicted	40.00	Nil
Annandale	NSW	38	Nurse	PO 17A PO 17	2.9.84	Convicted	150.00 Bond	Nil
			Nurse	PO 18	30.8.84	Convicted	25.00	Nil
Adelaide	SA	27	Refused	PO 17A	29.8.84	Convicted	60.00	Nil
Via Taree	NSW	37	Unemployed	PO 18	30.8.84			All
North Adelaide	SA	18	Unemployed	PO 17A	2.9.84	Convicted	40.00	Nil
Carlton	Vic		Refused	PO 17	22.8.84	Convicted	40.00	Nil
Brunswick	Vic	34	Teacher	PO 75	24.8.84			All
Coburg	Vic	28	Parish Worker	PO 17A	13.9.84			All
Black Forest	SA	33	Engineer	PO 18	30.8.84	Convicted	25.00	Nil
Fairfield	Vic	24	Student	PO 17A	22.8.84	Convicted	40.00	Nil
Unley	SA		Refused	PO 17A	28.8.84	Convicted	40.00	Nil
Chippendale	NSW	38	Secretary	PO 17A	23.8.84			All
Corimal	NSW	26	Student	PO 17A	22.8.84	Convicted	40.00	Nil
North Carlton	Vic	22	Student	PO 17	13.9.84	Convicted	100.00	Nil
West Croydon	SA		Refused	PO 43	30.8.84			All
Jolimont	WA	23	Computer Programmer	PO 18	30.8.84	Convicted	25.00	Nil
			Computer Programmer	PO 17	3.9.84	Convicted	120.00	Nil
				PO 17A PO 43	13.9.84	Convicted	120.00	Nil
Chippendale	NSW	19	Student	PO 17A	24.8.84	Convicted	40.00	Nil
Camperdown	NSW	27	Engineer	PO 43 PO 6 PO 6 NP 5	10.9.84			All
West Croydon	SA	18	Research Assistant	PO 43	26.8.84			All
Bulleen	Vic		Unemployed	PO 17A	13.9.84			All
Bulleen	Vic	23	Unemployed	PO 17A	13.9.84			All
Bulleen	Vic	19	Unemployed	PO 17	24.8.84	Convicted	40.00	Nil
Port Adelaide	SA	26	Unemployed	PO 17A	6.9.84			All

ARRESTEE PARTICULARS

Address Town/Suburb	State	Age	Occupation	Offences Charged	Offence Date	Conviction(s) Recorded	Penalty	Charges Outstanding
Wollongong	NSW	22	Student	PO 17A	22.8.84	Convicted	40.00	Nil
Brunswick	Vic	30	Refused	PO 43	26.8.84			All
Thirroul	NSW	26	Refused	PO 17A	22.8.84	Convicted	40.00	Nil
		29	Health Worker	PO 6 PO 7 PO 6	30.8.84			All
Wollongong	NSW	23	Student	PO 17A	22.8.84	Convicted	40.00	Nil
Alstonville	NSW	61	Forester	PO 17A	23.8.84			All
			Refused	CA	28.8.84			All
			Forester	PO 18	30.8.84	Convicted	25.00	Nil
Colonel Light Gardens	SA	31	Gardener	PO 18	30.8.84			All
Lake Cathie	NSW	26	Mother	PO 17A PO 17	2.9.84	Convicted	40.00	Nil
Lake Cathie	NSW	23	Unemployed	PO 17A	24.8.84			All
			Unemployed	PO 17A	28.8.84	Convicted	50.00	Nil
			Unemployed	PO 18	30.8.84	Convicted	25.00	Nil
			Unemployed	PO 17	3.9.84			All
O'Connor	ACT	21	Unemployed	PO 18	30.8.84	Convicted	25.00	Nil
Newtown	NSW	29	Paymaster	PO 18	30.8.84	Convicted	20.00	Nil
			Paymaster	PO 17A PO 17	2.9.84	Convicted	150.00	Nil
		35	Refused	PO 7 PO 6 PO 6 PO 6	30.8.84			All
			Unemployed	PO 18	30.8.84			All
Fitzroy	Vic	36	Nutritionist	PO 17A	28.8.84	Convicted	50.00	Nil
Ainslie	ACT	19	Student	PO 17A	5.9.84	Convicted	60.00	Nil
Croydon	SA	30	Refused	PO 18	30.8.84			All
East Brunswick	Vic	21	Student	PO 17	24.8.84	Convicted	40.00	Nil
			Student	PO 17A PO 75	28.8.84	Convicted	105.00	Nil
Collingwood	Vic		Refused	PO 17	22.8.84	Convicted	25.00	Nil
Aldgate	SA	32	Musician	PO 18	30.8.84	Convicted	25.00	Nil
Glebe	NSW	21	Unemployed	PO 17A	22.8.84	Convicted	40.00	Nil
Glebe	NSW	24	Student	PO 17A	22.8.84	Convicted	40.00	Nil
Trinity Gardens	SA	21	Gardener	PO 17A	29.8.84	Convicted	60.00	Nil
			Gardener	PO 18	30.8.84	Convicted	25.00	Nil
Parkville	Vic	21	Storeman/Packer	PO 17	22.8.84	Convicted	25.00	Nil
			Refused	PO 17A	30.8.84	Convicted	80.00	Nil
Morphettville	SA	27	Printer	PO 17	3.9.84			All
Maralinga	SA	32	Student	PO 17A	22.8.84			All
Richmond	Vic		Refused	PO 17	22.8.84	Convicted	25.00	Nil
			Refused	PO 17A	28.8.84	Convicted	80.00	Nil
Lyneham	ACT	21	Student	PO 18	30.8.84	Convicted	40.00	Nil
			Refused	PO 17A PO 75	28.8.84	Convicted	65.00	Nil
Mile End	SA	37	Rigger	CA	28.8.84			All
Bondi	NSW	24	Teacher	PO 17A	22.8.84			All
			Teacher	PO 17A	24.8.84	Convicted	40.00	Nil
			Teacher	PO 17A	28.8.84	Convicted	60.00	Nil
			Teacher	PO 7 PO 75	30.8.84			All
Nunawading	Vic	22	Refused	PO 17A	22.8.84	Convicted	40.00	Nil
			Refused	PO 7 CL 39A	30.8.84			All
West Brunswick	Vic	35	Petro-Chemical Operator	PO 17A	24.8.84	Convicted	40.00	Nil
Fremantle	WA	23	Student	PO 18	30.8.84			All
			Refused	PO 17	3.9.84			All
Neutral Bay	NSW	20	Waitress	PO 17A	24.8.84	Convicted	40.00	Nil

ARRESTEE PARTICULARS

Address Town/Suburb	State	Age	Occupation	Offences Charged	Offence Date	Conviction(s) Recorded	Penalty	Charges Outstanding
Maralinga	SA	20	Unemployed	PO 17A PO 75	22.8.84	Convicted	40.00	Nil
			Unemployed	PO 17A	24.8.84	Convicted	40.00	Nil
			Unemployed	PO 17A	28.8.84	Convicted	50.00	Nil
		19	Unemployed	PO 17A	22.8.84	Convicted	40.00	Nil
Carlton	Vic	18	Student	PO 17A	28.8.84	Convicted	40.00	Nil
Woollahrah	NSW	51	Unemployed	RT 41 PO 18	30.8.84			All
East Victoria Park	WA	54	Refused	PO 17	3.9.84	Convicted	120.00	Nil
			Refused	PO 18	30.8.84	Convicted	25.00	Nil
Whyalla	SA	15	Farmhand	PO 18	30.8.84			All
Maralinga	SA	20	Unemployed	PO 17A	22.8.84	Convicted	40.00	Nil
			Refused	PO 18	30.8.84	Convicted	25.00	Nil
Woolongong	NSW	36	Lecturer	PO 17A	22.8.84	Convicted	40.00	Nil
Yeppoon	Qld	36	Unemployed	PO 18	30.8.84	Convicted	25.00	Nil
Richmond	Vic	22	Unemployed	PO 17	13.9.84	Convicted	100.00	Nil
Unley	SA	33	Unemployed	PO 18	30.8.84			All
Salisbury	SA	30	Student	PO 43	26.8.84			All
Wollongong	NSW	19	Unemployed	PO 18	30.8.84	Convicted	25.00	Nil
		21	Unemployed	PO 18	30.8.84	Convicted	25.00	Nil
Maralinga	SA	21	Student	PO 17A	22.8.84	Convicted	40.00	Nil
Port Adelaide	SA	24	Unemployed	PO 17A	6.9.84			All
Kensington	SA	31	Firefighter	PO 17A	6.9.84			All
Melbourne	Vic	23		PO 17A	22.8.84	Convicted	40.00	Nil
Stepney	SA	23	Student	PO 18	30.8.84	Convicted	30.00	Nil
Fitzroy	Vic	23	Refused	PO 17A	30.8.84	Convicted	40.00	Nil
Hindmarsh	SA	21	Refused	PO 17A	6.9.84			All
Malmbury	Vic		Refused	PO 17	22.8.84	Convicted	40.00	Nil
Seacliff Park	SA		Refused	PO 43	30.8.84			All
Lane Cove	NSW	21	Refused	PO 17A PO 17	2.9.84	Convicted	40.00	Nil
Mile End	SA		Solicitor	PO 17A	22.8.84	Convicted	40.00	Nil
Randwick	NSW	24	Student	PO 17A PO 17	2.9.84	Convicted	40.00 Bond	Nil
Berwick	Vic	28	Refused	PO 17A	28.8.84	Convicted	40.00	Nil
			Refused	PO 17	13.9.84			All
North Fitzroy	Vic	25	Refused	PO 17A	13.9.84			All
North Caulfield	Vic	19	Refused	PO 17A PO 75	28.8.84	Convicted	65.00	Nil
St Peters	NSW	40	Journalist	PO 17A	23.8.84			All
			Journalist	CA	28.8.84			All
			Journalist	PO 18	30.8.84	Convicted	25.00	Nil
			Journalist	PO 17A PO 17	2.9.84	Convicted	75.00	Nil
Canberra	ACT	19	Refused	PO 18	30.8.84	Convicted	40.00	Nil
			Unemployed	PO 17A	5.9.84	Convicted	60.00	Nil
Maralinga	SA	27	Student	PO 17A	22.8.84	Convicted	40.00	Nil
Carlton	Vic	33	Landscape Architect	CO	20.8.84	Convicted	10.00 Bond	Nil
			Lanscape Architect	PO 17A	23.8.84	Convicted	40.00	Nil
			Architect	PO 17A	28.8.84	Convicted	80.00	Nil
Mile End	SA	23	Refused	PO 17A	30.8.84			All
Hornsby	NSW	25	Unemployed	PO 18	30.8.84	Convicted	20.00	Nil
Hornsby	NSW	24	Unemployed	PO 17A	24.8.84	Convicted	40.00	Nil
			Unemployed	CA	28.8.84			All
Mile End	SA	31	Fitter/Turner	PO 18	30.8.84	Convicted	25.00	Nil
Lismore	NSW	28	Unemployed	PO 43 PO 6	10.9.84			All
Maralinga	SA	20	Refused	PO 17A	22.8.84	Convicted	40.00	Nil
Hobart	Tas	19	Unemployed	PO 18	30.8.84	Convicted	25.00	Nil
		18	Research Officer	PO 07	26.8.84			All
			Research Officer	PO 7 PO 6 PO 75	30.8.84			All
Newtown	NSW	24	Unemployed	PO 17A PO 17	2.9.84	Convicted	40.00	Nil
Mile End	SA	24	Glassblower	PO 18	30.8.84			All
Fitzroy	Vic	25	Librarian	PO 17A	22.8.84	Convicted	40.00	Nil
Macclesfield	SA	36	Unemployed	PO 18	30.8.84	Convicted	25.00	Nil
St Kilda	Vic	24	Community Worker	PO 17	24.8.84	Convicted	40.00	Nil

ARRESTEE PARTICULARS

Address Town/Suburb	State	Age	Occupation	Offences Charged	Offence Date	Conviction(s) Recorded	Penalty	Charges Outstanding
Parkview	Vic	23		PO 17A PO 43	13.9.84	Convicted	40.00	Nil
Knoxfield	Vic	18	Refused	PO 17A PO 75	28.8.84	Convicted	65.00	Nil
Newtown	NSW	22	Student	PO 17	24.8.84	Convicted	40.00	Nil
Melba	ACT	19	Unemployed	PO 17A	5.9.84	Convicted	60.00	Nil
Burwood	NSW	23	Student	PO 17A	24.8.84	Convicted	40.00	Nil
Torrensville	SA	29	Refused	PO 17A	30.8.84	Convicted	40.00	Nil
Williamstown	Vic	27	Electrician	PO 18	30.8.84	Convicted	30.00	Nil
Parkside	SA	23	Refused	PO 18	30.8.84	Convicted	25.00	Nil
			Refused	PO 17	3.9.84			All
Maralinga	SA	33	Student	PO 17A	22.8.84	Convicted	40.00	Nil
O'Connor	ACT		Refused	PO 18	30.8.84	Convicted	25.00	Nil
Nurrabundah	ACT	27	Community Worker	PO 17A	13.9.84			All
Andamooka	SA	23	Greenkeeper	PO 7 PO 6 PO 6	6.9.84			All
Davenport	Tas	23	Childcare Worker	PO 17A	28.8.84	Convicted	40.00	Nil
Thornberry	Vic	18	Secretary	PO 43	26.8.84	Convicted	40.00	Nil
Oatley	NSW	21	Unemployed	PO 18	30.8.84	Convicted	25.00	Nil
Dulwich	SA	26	Political Activist	PO 18 PO 6	30.8.84			All
Woodford	NSW	24	Unemployed	PO 17A	24.8.84	Convicted	40.00	Nil
			Unemployed	CA	28.8.84			All
Prospect	SA	29	Photo/Journalist	PO 17A	24.8.84			All
Glebe	NSW	21	Refused	PO 17A	28.8.84	Convicted	50.00	Nil
Via Woomera	SA	26	Electrical Fitter	NP 5 NP 5	3.9.84			All
Caringbah	NSW	25	Gardener	PO 18	30.8.84	Convicted	25.00	Nil
			Gardener	PO 17A	2.9.84	Convicted	200.00	Nil
Lyneham	ACT	19	Unemployed	PO 17A	5.9.84	Convicted	60.00	Nil
		25	Student	PO 17A	22.8.84			All
Collingwood	Vic	31	Refused	PO 17	22.8.84	Convicted	40.00	Nil
North Adelaide	SA	21	Student	CO	20.8.84	Convicted	10.00 Bond	Nil
			Student	PO 17A	23.8.84	Convicted	40.00	Nil
		20	Labourer	PO 17A	22.8.84	Convicted	40.00	Nil
Maralinga	SA	29	Unemployed	PO 17A	22.8.84	Convicted	40.00	Nil
			Refused	PO 18	30.8.84	Convicted	25.00	Nil
West Geelong	Vic	25	Refused	PO 43	26.8.84			All
Mile End	SA	32	Student	PO 18 PO 6	30.8.84			All
Carlton	Vic	26	Unemployed	PO 17	13.9.84	Convicted	100.00	Nil
North Fitzroy	Vic		Occupational Therapist	PO 17A	13.9.84			All
Kew	Vic	22	Unemployed	PO 7	6.9.84			All
Chippendale	Qld	21	Student	PO 17A	24.8.84	Convicted	40.00	Nil
St Kilda	Vic	23	Unemployed	PO 43	26.8.84			All
St Morris	SA	15	Student	PO 18	30.8.84			All
Parkside	SA	00	Refused	PO 17A	6.9.84			All
Innacoo	WA	25	Surveyhand	PO 17A	24.8.84	Convicted	40.00	Nil
Hawthorn	SA	22	Student	PO 18	30.8.84			All
Hillcrest	SA	19	Student	PO 18	30.8.84	Convicted	40.00	Nil
Brunswick	Vic	24	Building Contractor	PO 17A	24.8.84	Convicted	40.00	Nil
			Refused	PO 17A	28.8.84	Convicted	80.00	Nil
Hawthorn	Vic		Refused	PO 17	22.8.84	Convicted	25.00	Nil
Fitzroy	Vic	26	Parish Worker	PO 17	24.8.84	Convicted	40.00	Nil
Wollongong	NSW	25	Student	PO 17A	22.8.84	Convicted	40.00	Nil
North Carlton	Vic.	26	Receptionist	PO 43	26.8.84			All
North Adelaide	SA	18	Actor	PO 17A	2.9.84	Convicted	40.00	Nil
North Melbourne	Vic	18	Student	PO 17A	28.8.84	Convicted	40.00	Nil
Mosman	NSW	18	Receptionist	PO 17A	24.8.84	Convicted	40.00	Nil
Carlton	Vic	0	Refused	PO 17A	24.8.84	Convicted	40.00	Nil
Eastwood	SA		Refused	PO 43	30.8.84			All
Carlton	Vic		Refused	PO 17	22.8.84	Convicted	40.00	Nil
North Carlton	Vic	27	Student	PO 17A	24.8.84	Convicted	40.00	Nil

ARRESTEE PARTICULARS

Address Town/Suburb	State	Age	Occupation	Offences Charged	Offence Date	Conviction(s) Recorded	Penalty	Charges Outstanding
Chippendale	NSW	31	Refused	PO 17A	28.8.84	Convicted	40.00	Nil
		20	Unemployed	PO 17A	24.8.84			All
			Unemployed	PO 18	30.8.84			All
Ainslie	ACT	24	Community Worker	PO 17A	13.9.84			All
			Unemployed	PO 17	22.8.84	Convicted	10.00	Nil
Goodwood	SA	23	Refused	PO 17A	30.8.84	Convicted	40.00	Nil
Maralinga	SA	19	Student	PO 17A PO 75	22.8.84	Convicted	40.00	Nil
			Unemployed	PO 17	13.9.84			All
Brompton	SA		Teacher	PO 43	30.8.84			All
Fitzroy	Vic	24	Student	CO	20.8.84	Convicted	10.00 Bond	Nil
			Student	PO 17A	23.8.84	Convicted	40.00	Nil
			Student	PO 17A	28.8.84	Convicted	50.00	Nil
Chatswood	Vic	26	Unemployed	PO 43	26.8.84			All
South Yarra	Vic	24	Clerk	PO 17A	24.8.84	Convicted	40.00	Nil

NATIVE VEGETATION (CLEARANCE) BILL

Adjourned debate on second reading.
(Continued from 29 August. Page 602.)

The Hon. ANNE LEVY: I oppose the second reading of this Bill on behalf of the Government members of this Council. The Hon. Mr Cameron's Bill resembles closely the Bill that you, Mr President, intimated you wished to see passed by this Parliament. I presume that Mr Cameron's Bill is a replacement for the Bill that you previously suggested.

Some time ago the concept of establishing a separate Act dealing with vegetation clearance was considered by the Department of Environment and Planning, which looked at the legislative options for controlling scrub clearance. The working party supported the concept of comprehensive land use legislation that would embrace a wide range of rural land use and land management activities. It was considered that vegetation clearance could be controlled and managed in an integrated way, but that this would need to include, *inter alia,* matters such as soil conservation, control of pest plants and feral animals and land subdivision control. However, the Department acknowledged that such legislation could not be introduced rapidly and therefore was not an appropriate legislative mechanism for introducing immediate control on scrub clearance, a matter which was considered urgent. As we all know, an appropriate control mechanism was available through the new 1982 Planning Act introduced by the Tonkin Government and the regulations under that Planning Act. That Act establishes a comprehensive system for consideration of planning and environmental impact of developmental proposals. The clearance controls, like the recent amendments on air quality, fit very neatly within the broad concept of planning controls under the new Planning Act.

The move away from the Planning Act that the Bill proposed by the Hon. Mr Cameron represents in fact downgrades the role of the Planning Act in environmental matters. It would involve the establishment of a new system which would substantially duplicate, and lose some of the advantages of, the system already available under the Planning Act. However, a further point is that the provision of compensation or assistance to landholders who are affected by clearance controls cuts right across a fundamental system; that is, that when owners of land are affected by zoning changes or decisions on applications for development there is no provision for compensation. This applies throughout the State.

If such assistance is to be provided in rural areas as a result of clearance controls it would seem appropriate that some other mechanism be introduced such as is already provided for hardship cases under the Rural Adjustment Scheme. We already have in place many schemes that will assist rural primary producers where there are cases of hardship. We do not need to establish further systems for helping people faced with genuine hardship. I will make a few comments on some of the details of the Hon. Mr Cameron's Bill and before I return to what I see as the major flaw in the Bill before us.

The Hon. Mr Cameron's Bill does not state, for instance, whether the controls apply in pastoral areas or urban areas, whether they apply to roadside vegetation, or even to vegetation that someone may wish to clear for the purpose of erecting a building. What native vegetation is to be considered under the Bill is not specified. Furthermore, the matters which should be considered in an assessment of a clearance application and which are set out in proposed section 15 are brief, and certainly not as specific as can be the case when very detailed criteria are inserted into a development plan.

It is a much broader brush than is available under the Planning Act. Furthermore, the Bill suggests in clause 11 that the Soils Division of the Department of Agriculture—and note that it is not the Minister of Agriculture, but merely the Soils Division of his Department—is to determine which areas, for which application for clearance has been made, are suitable for the purposes of primary production. This is certainly not specific enough for the purposes that are intended.

It could be argued that all land is suitable for some production, however marginal it may be, even if only in exceptionally good years or even if only for rough temporary grazing. Unless it is a complete desert it can be argued that the land would be suitable for some sort of primary production at some time. I presume that the Hon. Mr Cameron meant that consideration should be given; that would ensure a determination of land capability on a long-term basis, but his Bill certainly does not cover that situation.

In clause 12 the Bill requires the Rural Assistance Branch of the Department to determine, when requested, the economic advantages to the applicant and the State that would result from clearing. We infer from this that the Hon. Mr Cameron presumes that the agricultural economic benefits are the only things that matter.

The Bill provides that the so-called Native Vegetation Advisory Committee will have the ability to determine an application, provided that no more than 10 per cent of the agricultural land to which the application relates shall be retained as native vegetation. Where the committee believes that more than 10 per cent of the land should be retained

the decision should be made by the Minister. It is not specified whether this would be the Minister of Lands, the Minister of Agriculture or the Minister for Environment and Planning.

Essentially, the underlying philosophy of the Bill is that the environmental significance of land has less importance than agricultural significance; that is not something which would be accepted by many people. The acquisition and compensation clause (clause 16) is to apply when more than 10 per cent of the land concerned is desirable for retention. It is obvious, under this clause, that a landholder who has, for instance, only 1 per cent of his property still under scrub would receive compensation if clearance was refused which, with such a small proportion remaining as scrub, is a very likely circumstance.

In addition, a landholder who was, for instance, required to retain 11 per cent of land proposed for development would, assuming that it was all arable land, receive compensation on that 11 per cent, whereas a person with 9 per cent would receive no compensation at all. Under this scenario it is possible that funding constraints will encourage the Government to support less than 10 per cent retention of remaining vegetation and permit 90 per cent destruction of all remaining vegetation. It could also lead to adjustment of property boundaries by rural landholders to capitalise on such a policy or to qualify for compensation.

One clause in the Bill seems to me to have merit. I refer to clause 17, where the Bill provides that after a decision is made in relation to a particular area no further application to clear may be submitted. The notice of the decision would be endorsed on the lands title or lease. This very good provision of the Hon. Mr Cameron's Bill does not occur in the Hon. Mr Gilfillan's Bill, but I will not speak to that at the moment.

In addition, where compensation is payable, the landholder would not be permitted to graze the land, although the Bill goes on to say that stockproof fencing would be the responsibility of the Government. These provisions attempt to ensure the long-term protection of retained areas; that is certainly a section of the Bill that is of merit.

In relation to appeals, the compulsory conference provisions of the Planning Act are very useful, but they would not occur under the appeal provisions of clause 18 of the Bill. The appeal system proposed by the Hon. Mr Cameron is to the Land and Valuation Court. This involves Supreme Court judges who will therefore be tied up. It will provide a much more expensive appeal procedure than current appeals to the Planning Appeals Tribunal. There is no doubt in anyone's mind as to which is the more expensive form of appeals procedure. It is also unclear whether the Land and Valuation Court hearing an appeal is to review the merit of the decision or merely check that procedures and legalities have been properly gone through.

Turning to penalties, I point out that the Bill only contains an ability to institute summary proceedings under clause 22. Hence, while an offender can be punished, there are no civil proceedings, which are certainly more convenient for revegetation of cleared land. Furthermore, the penalty set out in clause 9 does not contain the ongoing increase in penalty recently inserted in the Planning Act—a very valuable approach of the penalty increasing with time, and that does not occur in the Bill put forward by the Hon. Mr Cameron.

As an overview of the Bill, I believe there is a grave danger that if such a Bill became law there would be excessive clearing occurring throughout South Australia on the basis that there are such severe financial constraints on Government that permission for clearing would be granted in an overwhelming majority of applications, regardless of the environmental merits of the piece of vegetation. However, there is a more fundamental objection to the Bill than I have dealt with in considering it in more detail. This is the whole question of compensation for loss of value resulting from planning decisions. There is no suggestion in the legislation of what should be considered the opposite side of the coin; that is, of compensation to the taxpayer for the value of improvements to land value that have resulted from planning decisions.

It seems to me totally illogical to suggest that people should get compensation if they are in any way disadvantaged but not pay compensation if they have been advantaged, and this is a fundamental objection to the whole concept of this Bill. Rural land values are affected by many different things resulting from taxpayers' contributions. Better roads and the effect of advice given by officers of the Department of Agriculture can have considerable effect on the value of pieces of rural land. The very existence of vegetation clearance regulations can have an effect on the value of land that is already cleared, and I am told that this is happening in some areas. There are many different cases of Government assistance involving taxpayers' money or of planning decisions that benefit rural landholders and increase the value of their land.

There is no suggestion that they should return that value to the Government, yet they put out their hands for assistance from the Government. I think that they are trying to have two bob each way. It would seem to me to be more honest if the Bill proposed that rural landholders were going to repay any increased value that they got as a result of planning decisions. The whole notion of compensation as a result of planning decisions is not one that we can in all honesty limit to rural areas. In all fairness, it would have to apply to urban areas as well, unless someone is suggesting that farmers are somehow special members of the community with rights greater than those of anyone else.

Again, in urban areas the betterment/repayment question would come in, because the value of properties in urban areas increases as well as decreases due to planning decisions. The whole thing would be impossibly complicated in evaluation, calculation and assessment. It would be enormously expensive and time consuming for a vast number of people. Certainly, it would be grossly unfair unless we have increases in value repaid to the Government as well as compensation for decreases in value. To me, it is just not on to have compensation in one direction only as a result of planning decisions. Therefore, I urge the Council to oppose the second reading.

The Hon. C.M. HILL secured the adjournment of the debate.

PLANNING ACT AMENDMENT BILL (No. 3)

Adjourned debate on second reading.

(Continued from 12 September. Page 771.)

The Hon. B.A. CHATTERTON: I congratulate the Hon. Mr Gilfillan on part of his Bill, which is quite different from the one introduced by the Hon. Mr Cameron. The Hon. Mr Gilfillan's Bill retains the existing vegetation clearance controls under the Planning Act and it retains the existing practices and methods of making decisions on vegetation clearance. What the Hon. Mr Gilfillan wishes to do is to go into the area of compensation, although he is trying to develop a new concept that is not compensation in the sense of loss of potential agricultural value. He is trying to develop a new concept of adjustment of value of the land based on its value as scrub that cannot be cleared compared with its value as scrub that can be cleared. While it is interesting to make that sort of distinction, it eventually

comes down to much the same sort of thing—of compensation being paid. The Government has undertaken some research into the Hon. Mr Gilfillan's concept. The Minister has supplied me with a few figures on a few cases.

I think they are of some interest because they are very relevant to the Hon. Mr Gilfillan's proposal. The first case involved scrubland on Kangaroo Island in the hundred of Duncan where consent to clear was refused and the valuation was $50 per hectare, whereas the valuation of land on the same property where consent was given was $200 per hectare. On another property on Kangaroo Island none of the land was approved for clearing; it was a water protection area and in that instance all the land was valued at $50 per hectare, whether or not approval was granted.

The Hon. I. Gilfillan: Who did the valuation?

The Hon. B.A. CHATTERTON: The Valuer-General provided the figures. The third example occurred in the South-East in the hundred of Cunamurra. The value of the scrub where approval was given was $550 per hectare, whereas the value of the scrub where approval was refused was $100 per hectare. The fourth example occurred in the Murray Mallee in the hundred of Peake, where the value of the land where approval was given was $55 per hectare and the value of the land where approval was refused was $10 per hectare. The final example is on the West Coast in the hundred of Talton where the valuation of the land where approval was given was $20 per hectare, whereas the value of the land where approval was refused was $2 per hectare.

From those figures it is fairly obvious in nearly all cases that the amount of compensation that will be paid under the Hon. Mr Gilfillan's Bill is between 75 and 90 per cent of the value of the land, apart from one example where the value remained the same. In that case one wonders just what the Government will get for paying that amount of compensation. If that compensation was paid, the Government would not receive very much for the money spent. If the Government made the total payment to purchase the land, it would at least be able to undertake management measures to retain the scrubland; whereas by paying the compensation, which amounts to between 75 and 90 per cent of the value of the land, it does not really get anything under the legislation in the way of protecting and managing the native vegetation.

The Hon. I. Gilfillan: Were areas specified where there was total refusal?

The Hon. B.A. CHATTERTON: The case studies relate to properties where land clearance was sought, and they relate to the areas granted approval and refused approval. Apart from one instance where the whole of the land was refused approval—where the valuation is the same in both cases—there was partial approval for some land to be cleared and for some land not to be cleared. The point arises whether the Government will receive value for money if it pays compensation at that level while receiving nothing in terms of being able to manage or retain the land for which it has paid compensation.

However, I think the matter is more fundamental than that. During debate on the Hon. Mr Cameron's Bill, the Hon. Ms Levy asked whether compensation payments should be made at all. I will add to that very good contribution by the Hon. Ms Levy by stating that we already have the Soil Conservation Act which refuses farmers the right to clear land, and that legislation provides no compensation. The Soil Conservation Act has been in force for many decades, and it has been widely accepted within the farming community that farmers must obey it. Before farmers clear land that is in any way at risk from soil erosion, they must obtain permission under that Act. If permission is refused—as is often the case where there is light sandy land, sand dunes, and so on—farmers do not receive compensation for the land they cannot clear.

The Hon. I. Gilfillan: That's a different basis.

The Hon. B.A. CHATTERTON: Yes, but it is still an overall community objective that we should not increase soil erosion. We should try to retain our natural land resource for the long-term benefit of the community. That is also the reason behind the legislation which prevents the clearance of land. It is an overall community objective, as it was in that case. Perhaps it had more direct benefits to individual farmers, but it was still an overall community objective that we should not clear land indiscriminately—and no compensation was paid.

The Hon. M.B. Cameron: I haven't suggested that in my Bill. If you think that, you haven't read it.

The Hon. B.A. CHATTERTON: I am not discussing the Hon. Mr Cameron's Bill. I think that many people incorrectly interpret the way in which a number of farmer organisations have reacted to the legislation, and they have been very vocal in their opposition. In my private discussions with many farmers in those areas that have been established for some time—

The Hon. M.B. Cameron: Like the Barossa Valley.

The Hon. B.A. CHATTERTON: Like the Barossa Valley, the Mid-North and many areas where the land was cleared a long time ago—they are acutely aware of the fact that the land has been over-cleared, that the remaining trees are dying through old age, and they are very concerned indeed at the loss of the tree landscape throughout those regions. Unfortunately, the views of those farmers have not been widely reported or publicised as have the views of farmers in the newer areas of the State who are what might be termed in the front line of scrub clearance. Those farmers seem to have been able to more strongly influence farmer organisations and give the public impression that all farmers are bitterly opposed to the retention of native vegetation. However, that is not the case at all. Many farmers take a very responsible attitude and would like to see large areas of vegetation retained.

I have raised these points because it seems to me that, while the Hon. Mr Gilfillan is putting forward a new method of assessing compensation, it really amounts to compensation even if it is put forward in a different form. The Government has already said that to make compensation payable in this instance would raise the whole question of compensation in all other areas of planning. As the Hon. Ms Levy has pointed out, once compensation is paid in all other areas of planning it is obvious that people who benefit from planning decisions should also make a contribution. For those reasons, I oppose the Bill.

The Hon. DIANA LAIDLAW secured the adjournment of the debate.

ABORIGINAL LANDS TRUST ACT AMENDMENT BILL

Second reading.

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

That this Bill be now read a second time.

The purpose of this Bill is to enable any Aboriginal community occupying lands owned by the Aboriginal Lands Trust to invoke powers to deal with persons who are intoxicated persons under the control of alcohol, and to control the possession or use of alcohol on those lands. The enormous social and personal damage and economic cost within the general Australian community through the abuse of

alcohol is well known. The effects on the Aboriginal community have been more visible and even more devastating. This recourse to alcohol is a symptom of the circumstances of so many Aboriginal communities and individuals, where dispossession of land, loss of economic and cultural bases and erosion of traditional life styles have brought about a general social malaise and individual loss of personal dignity.

In recent years, much has been done with a view to attacking those issues and thereby lessening the causes of alcohol abuse. Programmes to improve health, educational standards, housing and employment opportunities are all contributing towards better opportunities for Aboriginal people to overcome their major social and economic disadvantages. Importantly, Aboriginal people themselves are now closely involved in the design and delivery of those services, and further moves are being made in that direction, especially in the area of community based health services. However, all of these programmes must be viewed as long-term change agents.

Aboriginal people are concerned that short-term immediate action also be taken to deal with the visible effects of alcohol abuse. In South Australia the Aboriginal controlled WOMA Committee and the Aboriginal Sobriety Group provide hostel and rehabilitation services in Adelaide and several country centres.

A further important area for action, which is being addressed in this Bill, is the question of controlling liquor abuse in Aboriginal communities, especially in the more remote semi-tribal areas. Around Australia, Aboriginal people are asking that law be designed to provide a means to that end. In the Northern Territory, provision has been made under the Liquor Licensing Act to declare Aboriginal lands to be dry, and for heavy penalties for bringing liquor on to the lands. Provision was made in the Pitjantjatjara Land Rights Act for regulation-making power for that purpose, and negotiations are in hand to implement those regulations. Similar provisions exist in the Maralinga Land Rights Act.

All other Aboriginal freehold land in South Australia is held by the Aboriginal Lands Trust. There are no provisions in that Act concerning these issues, and this Bill is aimed at filling that gap. Members are aware of media publicity regarding the Yalata Aboriginal community in this regard. All of the things that have been said earlier about the social disintegration of Aboriginal people apply with force to the people living at Yalata. All parties involved at Yalata, including especially the people themselves, are generally agreed that until firm action is taken to reduce alcohol abuse and so gain a more stable law and order situation, all other programmes introduced for the benefit of the people will be seriously inhibited. The Yalata Council has asked for a strong law to prevent liquor coming on to the land, and to deal with intoxicated people who cause serious social disturbance. They have been supported in this by the Aboriginal Legal Rights Movement.

There have been difficulties in framing legislation in this regard in the past which does not conflict with the Commonwealth Racial Discrimination Act. This Bill therefore seeks to make the provisions of the Public Intoxication Act, which applies to the community generally and is soon to come into operation, also apply to Aboriginal Lands Trust freehold lands. Those provisions will deal with intoxicated persons. Further sections provide for control to be established over liquor being brought on to the land.

It is important to note that all of these provisions will be applied only at the initiative of the relevant Aboriginal community, and with the recommendation of the Trust. Further, there is flexibility in the application of the provisions of the Bill in accord with the wishes of the community. The Bill is framed therefore to provide a high level of community control over the enforcement of its provisions. I seek leave to have the detailed explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Clauses

Clause 1 is formal. Clause 2 inserts a definition of 'the lands' into the principal Act. These are defined as being those lands vested in the Trust under the principal Act. Clause 3 is the major provision of the Bill. It inserts a new section 16a into the principal Act. This new section deals with the application of the Public Intoxication Act to the lands. It provides that a reference in that Act to a public place shall be construed as a reference to a part of the lands declared under the new section to be a public place. Authorised officers in relation to the lands will be persons appointed with the concurrence of the Trust. The sphere of activity of a particular authorised officer may be restricted under paragraph *(b)* (ii). A power to search premises or vehicles and to confiscate alcoholic liquor or drugs may be extended to specified parts of the lands by proclamation. Subsection (2) empowers the Governor to make the proclamations that are necessary to extend the operation of the Public Intoxication Act (with the modifications referred to above) to the lands. Subsection (3) provides that a proposal for making a proclamation under subsection (2) must be initiated from within the Aboriginal communities affected by it and that those communities must be in general agreement that the proclamation should be made.

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

ADMINISTRATION AND PROBATE ACT AMENDMENT BILL (No. 2)

In Committee.

(Continued from 18 September. Page 891.)

Clause 13—'Statement of assets and liabilities to be provided with application for probate or administration.'

The Hon. K.T. GRIFFIN: A further amendment has been circulated to page 5, after line 36. It replaces the amendments that I proposed to move yesterday. Therefore, I move:

Page 5, after line 36—Insert new subsection as follows:

(6a) A reference in this section to the assets and liabilities of a deceased person is a reference to—

(a) assets and liabilities of the deceased at the date of his death; and

(b) assets falling into the estate after the death of the deceased not being an accretion to the estate arising out of an asset existing at the date of his death;

but does not include a reference to any asset or liability prescribed by the rules.

There has never really been any difference between my views and the views of the Attorney-General and his advisers as to what we are trying to achieve, but there is a difference between our views as to the way in which we can get there. I certainly want to achieve the disclosure of assets in a deceased estate in existence at the date of death or anything that might come into existence, such as a *chose* in action after death. I did not want to include a requirement to disclose assets such as bonus shares, the natural increase in livestock, interest, or the conversion of the estate from one form to another. Having had further discussions with the Registrar of Probates and Parliamentary Counsel, I am satisfied that the amendment overcomes the problem.

I had a difficulty about including 'trustee', but the amendment will leave 'executor, administrator or trustee' in the clause and will limit it to the estate of a deceased person,

not requiring a trustee to periodically disclose new assets during the course of administration or subsequently a long trusteeship. The form of words arises largely from discussions with the Registrar of Probates. In fact, I believe that the Registrar was the principal originator of the words, but I must also pay a tribute to Parliamentary Counsel who has adapted the words and has obviously wrestled with the problem quite extensively. I believe that the amendment will overcome the problems that I foresaw in relation to the clause as presently drafted.

The Hon. C.J. SUMNER: As the honourable member has said, the matter has been the subject of discussion between the honourable member and the Registrar of Probates. I believe that the amendment overcomes the problems that the honourable member foresaw with the Bill as originally drafted. Accordingly, I am happy to accept the amendment.

Amendment carried; clause as amended passed.

Title passed.

Bill reported with amendments. Committee's report adopted.

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

That this Bill be now read a third time.

I wish to give attention to clause 11, to which the Hon. Mr Griffin referred. Clause 11 inserts new section 118q in the principal Act and deals with the power of an administrator to avoid dispositions and contracts of patient. The Hon. Mr Griffin asked what would be the position of third parties where there is a disposition of property by a person whose estate is subject to administration and the person to whom the property is disposed grants a security over it or otherwise disposes of it.

The first point to be noted is that an administrator cannot avoid a disposition where the other party to the transaction did not know or could not reasonably be expected to know that the person with whom he dealt was of unsound mind. I made that point yesterday. The question of avoiding a disposition therefore only arises where the other party knew that the person was of unsound mind.

The legal position is basically that outlined by the honourable member in the second reading stage. If the contract is wholly executory, the party entitled to avoid the contract can plead its voidability in action against him. If it has been wholly or partly executed, he can claim to have it set aside and to be restored to his original position. But until the right of avoidance is exercised, the contract is valid. Thus, if a contract for the sale of goods is voidable by an administrator (but not avoided), the other party will acquire a good title to the goods which he can transfer to an innocent purchaser for value. The right of avoidance must also be exercised promptly in most cases.

The intervention of a third party may prevent rescission. This is one of the risks that will be run by the administrator if he delays in taking action for, if a third party acquires an interest in the subject matter of the contract before the contract has been avoided, a claim for rescission will not lie, provided that the third party acted in good faith and gave consideration.

Thus, although there may be no duty to act within a prescribed time, it would be in the administrator's interest to act promptly, for the longer the delay, the greater the possibility of a third party acquiring rights in the subject matter of the contract.

Bill read a third time and passed.

AGED AND INFIRM PERSONS' PROPERTY ACT AMENDMENT BILL (No. 2)

(Second reading debate adjourned on 11 September. Page 706.)

Bill read a second time.

In Committee.

Clause 1 passed.

Clause 2—'Commencement.'

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

Page 1, after line 15—Insert new subsection as follows:

(2) The Governor may, in a proclamation fixing a day for this Act to come into operation, suspend the operation of specified provisions of this Act until a subsequent day fixed in the proclamation, or a day to be fixed by subsequent proclamation.

These amendments, which also involve the insertion of a new clause later, are proposed upon the basis of a request received from the Public Trustee after the introduction of the Bill. The Public Trustee's concern relates to section 31 of the principal Act, which provides for the payment of expenses and remuneration to managers of protected estates. Under that section, the Public Trustee may receive a commission payable in accordance with rules made under section 122 of the Administration and Probate Act, 1919. However, by Act No. 5 of 1972, sections 112 and 122 of the Administration and Probate Act were amended to enable the Public Trustee's commission to be fixed by regulation made pursuant to section 112 of that Act instead of by Rules of Court.

The consequential amendment required for section 31 was never made. Regulations relating to the Public Trustee's commission under the Aged and Infirm Persons' Property Act, 1940, have since been made. It is therefore intended to amend section 31 to correct the inconsistency. The Public Trustee's request has been prompted by an action presently before the courts in which it has been argued that section 31 (2) is relevant. Accordingly, it is proposed that the commencement provision be amended so as to allow the Governor to suspend the operation of proposed new clause 7a until that action has been resolved.

Amendment carried; clause as amended passed.

Clauses 3 to 7 passed.

New clause 7a—'Expenses and remuneration of manager.'

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

Page 3, after line 10—Insert new clause as follows:

7a. Section 31 of the principal Act is amended by striking out from subsection (2) the passage 'in accordance with rules made pursuant to section 122' and substituting the passage 'and fees determined in accordance with regulations made pursuant to section 112'.

New clause inserted.

Clause 8—'Insertion of new ss. 32a and 32b.'

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

Page 3—

Line 26—Leave out 'the Public Trustee that a' and insert 'a manager that the'.

Line 28—Leave out 'under his hand and seal'.

Line 38—Leave out 'The Public Trustee' and insert 'A manager'.

If my amendments to this clause are accepted, they will enable the manager of a protected estate, where the estate has property in some other jurisdiction, to appoint somebody in that jurisdiction to deal with the estate of the protected person. I made the point during the second reading debate that proposed section 32b is limited to Public Trustee exercising that power to appoint an authority in another jurisdiction. I believe that there ought to be at least the power for an individual manager to exercise that same power because, under the Aged and Infirm Persons' Property Act it is not always Public Trustee who is appointed manager of the protected estate.

I have personally acted in matters where individuals, relatives particularly, have been appointed managers and while they have not had to worry about interstate or overseas assets there may be occasions when they will have to be so concerned. It is for that reason I have moved these amendments, which will facilitate an individual manager as well as Public Trustee appointing persons outside the State to deal with the assets of a person outside South Australia. Because all the amendments are related I have moved them as a parcel.

Amendments carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

JURIES ACT AMENDMENT BILL

In Committee.

(Continued from 13 September. Page 839.)

Clauses 2 to 4 passed.

Clause 5—'Repeal of ss. 5, 6 and 7 and substitution of new sections.'

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

Page 1, lines 28 to 32, to page 2, lines 1 to 15—Leave out proposed new section 7.

This part of the clause is the part that allows an accused person to elect, in accordance with Rules of Court, to be tried by judge alone. I have already spoken at length on the reasons why I do not believe that it is appropriate to give an accused person the right to so elect on terms that are not spelt out even in the second reading explanation but are to be left to the Rules of Court. In respect of the administration of the clause, if it is enacted, I raise some questions as to when the election would be made, whether it would be possible for that election to be changed once made, whether it is to be made within a specified period after a committal regardless of when the matter comes on for trial or whether it is to be made at a fixed time before the trial commences.

I foresaw the possibility of the right to elect being used as a basis for judge shopping with an accused person being in a position of waiting perhaps until the judge who was likely to hear the case was known, and then making a decision as to the odds of acquittal or conviction when that judge was known. I believe that that is undesirable. I also indicated that the jury system is one of the cornerstones of our system of justice administration and I do not believe that in this area there should be an opportunity for accused persons to opt out of the jury system if they plead not guilty to the offence with which they have been charged.

I also believe that it will be particularly difficult for legal advisers to properly advise their clients of the best way to deal with a trial, that is, either to make the election or allow it to go to a jury. I also made the point that I believe that putting judges in the position of having to be judges of both fact and law would place them in an invidious position and leave them more open to pressure as well as antagonism and abuse, and possible acts of violence as in fact has occurred with the Family Law Court judges.

The other point I made was that it certainly was not clear what the rights of appeal would be both for the Crown and for the accused. I indicated that I believed that where the accused was appealing against a conviction there would be a requirement for the judge to give detailed reasons which would undoubtedly lengthen the conduct of the trial and require a longer time for the judge to make a decision and to properly collate and present his reasons. Of course, it would be a much more fertile ground for appeal if the judge was required to act in that way. I do not believe that the provision is at all satisfactory. I think it should be resisted at all costs, and that is the point that I will be pursuing during the course of debate on this clause.

The Hon. C.J. SUMNER: I oppose the amendment. This proposition was recommended by the Mitchell Committee into the criminal law. It provides an accused person with a further option, that is, trial by judge alone. The Rules of Court will deal with the time in which an election must be made. That should prevent the problem that the honourable member has outlined of so-called 'judge shopping'. The Chief Justice had some concerns about this and wanted the power to have Rules of Court relating to this matter specifically inserted so that people would be required to make the election prior to the identity of the trial judge being known.

The second problem that the honourable member raised was that of legal advisers, and I really do not think that that is a problem. Lawyers have to advise their clients on a whole range of very complex and emotive issues now in civil and criminal cases. I do not see that this adds any particular additional burden to them. It may be in this State that the general feeling will be not to make the election and to continue with a trial by jury in most cases.

The Hon. K.T. Griffin: Is the Crown to have a right of appeal against a judge's decision?

The Hon. C.J. SUMNER: I answered that during my second reading reply. I do not see that this particular advice that will need to be given by lawyers is any more difficult than other problems that they are obliged to advise their clients about. There is no alteration to the rights of appeal under the Bill; an acquittal will still be an acquittal whether or not it is decided by a judge or jury. At the moment a jury acquits and that is the end of the matter, subject to a recent provision introduced to enable a case to be stated to the Supreme Court on a misdirection of a judge even following an acquittal. There will not be a right of appeal against an acquittal decision if an accused person elects for trial by judge alone. I think that it is a useful reform. It has been recommended by the Criminal Law and Penal Methods Reform Committee and I commend it to the Committee.

The Hon. K.T. GRIFFIN: That fact that the Mitchell Committee recommended it does not necessarily mean that it has to be adopted. The Government has, of course, declined to adopt the Mitchell Committee's recommendation to abolish the unsworn statement. It is being rather selective in the recommendations which it is adopting. So, the argument that it has been recommended by the Mitchell Committee does not carry any significant weight in my view.

The situation of an acquittal worries me. In courts of summary jurisdiction where the question of innocence or guilt is determined, there is a right of appeal by the Crown. Here we have a situation where, if an accused person elects to be tried by a judge, no matter how wrong the acquittal may be on the evidence, a decision of one person will mean that an accused person goes free. It is a different matter with a jury because 12 people are making a decision on the basis of the evidence before them. I suggest that one is more likely to get the right answer from 12 ordinary people than one would from a single arbitrator, such as a judge. I put on record that the situation of appeals worries me. If the clause passes into law, then in Government I would want to look at the way in which it was operating. At the moment I cannot see it being an appropriate mechanism for dealing with some aspects of the administration of justice.

I also put on record now in respect of all divisions that might be held today that, although I might not take a point of order in respect or who may or may not be entitled to vote, it is not to be taken as any indication that we have acquiesced in the intimation that the Attorney made last

week as to the entitlement of two honourable members of this Chamber to participate in the vote. That is a matter for another day. I do not want any failure to take a point of order to be construed as any acquiescence concerning the position that the Attorney put before the Chamber then. In summary, I am disappointed that the Attorney is pursuing this provision. I hope that there will nevertheless be enough support in the Committee to defeat the proposal and support my amendment.

The Hon. C.J. SUMNER: I accept that on this occasion I have called into support the Mitchell Committee. I agree that it is for a Government to determine what recommendations of that committee should be implemented and on some occasions decisions have been taken not to implement some of its recommendations. However, it was recommended in this case and I put it forward more on the basis of arguing that it is not something that would be considered completely abhorrent to at least one judge, that it is not something that is a completely scatterbrained idea, and that it is an idea that has some support (and some very respectable support) in the community, despite the fact that there may be differences of opinion on it.

As to the second matter raised by the honourable member about his not taking a point of order on Standing Orders, irrespective of what the honourable member raises, the proceedings of Parliament cannot be challenged as a result of the matter that the honourable member raised last week. I made that clear when he raised it last week, and I believe that until such time as a member's action is taken to declare a seat vacant the member is entitled to vote in Parliament. I believe the law is very clear on that.

The Committee divided on the amendment:

Ayes (8)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes (9)—The Hons G.L. Bruce, B.A. Chatterton, J.R. Cornwall, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, C.J. Sumner (teller), and Barbara Wiese.

Pairs—Ayes—The Hons R.C. DeGaris and Peter Dunn.

Noes—The Hons Frank Blevins and C.W. Creedon.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clause 6—'Qualification of jurors.'

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

Page 2, lines 16 and 17—Leave out 'is amended by striking out paragraph (a1)' and insert:

is amended—

(a) by striking out paragraph (a1); and

(b) by striking out from paragraph *(b)* the passage 'sixty-five years' and substituting the passage 'seventy years'.

The amendment in the Bill deals with the ages at which persons are eligible to serve on juries both at the bottom and top ends of the age range. The Bill proposes to amend the principal Act to ensure that all persons over the age of 18 years, subject to the exclusions referred to later, will become eligible and that they will cease to be eligible at the age of 65 years. In the second reading debate I made the point that there seemed to be no good reason for it to be limited to 65 years. My amendment seeks to increase the age from 65 years to 70 years. It will mean that even one of our honourable members will be able to serve on a jury when he retires. It brings the provision in line with the retiring age of justices; it brings it in line with the practice in the courts of summary jurisdiction, where justices no longer sit after attaining the age of 70 years, and it brings it closer to the age at which company directors are ineligible to sit as directors unless the annual meeting of the company otherwise agrees. That age is 72 years. I hope that honourable members accept the increase in the age limit from 65 years to 70 years, because I believe that is more consistent than limiting it to 65 years.

The Hon. C.J. SUMNER: Hope springs eternal; on this occasion it is well justified. The Government accepts the amendment. I think the arguments put forward by the honourable member have validity. It is always a bit of an arbitrary decision as to when, because of age, a person is no longer able to make decisions on behalf of the community. I know that the Hon. Mr Milne is an enthusiastic supporter of this amendment. I think the amendment is reasonable. The basic principle behind the Government's amendments dealing with eligibility for jury service is to try to ensure as far as possible that the jury reflects the community. That was the rationale for reducing the age to 18 years. That is also the rationale of the honourable member—and rightly so—for increasing the age to 70 years. I see no difficulty with the amendment.

Amendment carried; clause as amended passed.

Clause 7—'Disqualification from jury service.'

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

Page 2, lines 24 to 34—Leave out paragraphs *(b)* and *(c)* and insert new paragraphs as follows:

(b) he has at any time been sentenced to a term of imprisonment (whether or not that term was suspended);

(c) within the period of ten years immediately preceding the relevant date, he has served the whole, or a part, of a term of detention in an institution for the correction or training of young offenders;

I am concerned that under new section 12 a person is disqualified from jury service only if he has been sentenced to imprisonment for a term exceeding two years or, if he has been sentenced to a period of imprisonment less than two years, he has completed the service of the term of imprisonment more than 10 years before the date on which he is required to serve on a jury.

This clause involves the right of a person to serve as a juror. I suppose it is hardly appropriate to refer to it even as a right—it is more of an obligation. We are discussing service on juries, which will determine the innocence or guilt of persons accused of serious crimes. I believe it is quite wrong for anyone who has been before the courts and sentenced to a period of imprisonment—whenever it occurred—to be in a position where after a certain time he is eligible to serve on a jury and to participate in its decision. As I have said, I do not think it matters whether the imprisonment was for a period of one year and 10 months or two years and one month; the fact is that it is a period of imprisonment, which is only imposed for serious offences. Any period of imprisonment may well colour the attitude of a prospective juror at any time that he or she is required to serve on a jury. For that reason, I believe there should be a total exclusion of any person who has been sentenced to imprisonment for whatever term.

My amendment also deals with young offenders. I recognise that young offenders ought not to carry the burdens of their youth for the rest of their lives, particularly in relation to service on a jury. My amendment proposes that, if 10 years before the date of requirement to serve on a jury a person has not served any period of detention in an institution for the correction or training of young offenders, he should be eligible to serve on a jury. I have addressed the situation of a young offender being convicted of a serious crime such as manslaughter or murder. I believe that that situation is covered by paragraph *(b)* of my amendment. Generally speaking, the period of detention which is relevant only relates to the less serious offences. If there has been no period of detention served within 10 years, the previously young offender is thereafter eligible to serve.

The Hon. C.J. SUMNER: I oppose the amendment. The Government's proposal is a reasonable compromise between

the competing interests in this matter. The Government proposition provides that anyone who has been sentenced to a term of imprisonment exceeding two years is automatically disqualified from jury service forever; but that someone sentenced—juvenile or not—to a term of imprisonment of less than two years may, if there has been no further term of imprisonment, be eligible for jury service 10 years after release from prison.

There is an argument that says that by being convicted and serving a prison sentence a person thereby pays his debt to society, and that on release from prison that person should not be subject to any further disability as a result of that conviction and sentence of imprisonment. Therefore, any person who is not in prison at the time of requirement for jury service but who has been released should be eligible for jury service. That argument could be put as justification for providing that people can be eligible for jury service even though they may have served a term of imprisonment. That is consistent with general principles espoused in this area. However, the Government does not accept that argument, argued as it is in those absolute terms with respect to jury service. On the other hand, the Government cannot go as far as the Hon. Mr Griffin and say that just because a person has served a term of imprisonment he is automatically excluded from jury service for the rest of that person's life. To us that seems to be too all-embracing. The amendment originally proposed by the honourable member would have excluded persons who may have served a period in a detention centre following the committal of an offence as a juvenile. They would have been excluded from jury service for the rest of their lives.

The Hon. K.T. Griffin: I didn't move that amendment.

The Hon. C.J. SUMNER: I agree—the honourable member did not move that amendment. He has modified his position somewhat by providing that a juvenile may be rehabilitated in terms of his eligibility for jury service 10 years after his release from the institution of detention, but there are other examples where the proposition put forward by the honourable member is still too Draconian. It could be that a person received a one month term of imprisonment for a relatively minor offence, and even an offence which did not involve a trial by jury but which was tried summarily. That might have happened to a person of 18 who for the rest of his life would be thereby precluded from jury service. It is a matter of balance, working out where to draw the line. I accept that the Government's position is a compromise, but the honourable member's proposition goes too far. Whether it would cover someone who was in prison for non-payment of a fine is another question.

The Hon. K.T. Griffin: A sentence of imprisonment.

The Hon. C.J. SUMNER: The honourable member says that it is a sentence. I suppose that it would be interpreted as a sentence of imprisonment handed down by a court. I know that it would not happen to the honourable member, but in the old days of public drunkenness the honourable member, after an exuberant night during his days at the Law School, could have found himself in the clutches of the police for having over-imbibed, and the court could have considered that this young chap needed to be taught a lesson and he could have ended up for two days in the Adelaide Gaol. For this over-exhuberance, he then would be precluded forever and a day from serving on the jury.

The Hon. K.T. Griffin: Fortunately, as a member of the legal profession, I am excluded forever and a day, anyway.

The Hon. C.J. SUMNER: The honourable member is, but I was only putting it forward as an example—not a very good one in view of the honourable member's well known abstemious habits. I am sure that I could choose someone else in the Council to support my argument with more validity. That is by way of example of the sort of situation that could occur if the honourable member's amendment were accepted. That is not justifiable. The proposition that the Government has put forward is a reasonable compromise in an area that I admit has its difficulties.

The Hon. K.T. GRIFFIN: I do not find the example given by the Minister particularly refreshing or even convincing, but I still hold to my view that a person who has been in gaol for two years, or even for one year and 10 months, ought not to be able to sit in judgment of a citizen who is charged with a criminal offence. There is a deal of inconsistency throughout the whole of new section 12. One could take paragraph *(d)* (ii) where, if a person has been disqualified from holding a driver's licence for something in excess of six months within the past five years, that is enough to disqualify. It is much less serious to be disqualified from holding a driver's licence than to be put in gaol for up to two years; yet, in terms of relative merit, we must put the person who has been placed in gaol even 10 years or more ago at the bottom of the scale. There is a great deal of inconsistency in the groupings of people in section 12 who are ineligible and eligible. That is one of the reasons why I believe that the amendment that I am moving is much more appropriate.

The Committee divided on the amendment:

Ayes (8)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes (9)—The Hons G.L. Bruce, B.A. Chatterton, J.R. Cornwall, C.W. Creedon, M.S. Feleppa, I. Gilfillan, Anne Levy, K.L. Milne, and C.J. Sumner (teller).

Pairs—Ayes—The Hons R.C. DeGaris and Peter Dunn. Noes—The Hons Frank Blevins and Barbara Wiese.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clauses 8 to 13 passed.

Clause 14—'Power of Sheriff to excuse in certain cases.'

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

Page 3—

Line 41—After 'is amended' insert:

'—

(a)'.

After line 42—Insert paragraph as follows:

(b) by inserting after its present contents as amended by this section (now to be designated as subsection (1)) the following subsections:

(2) If the Sheriff is satisfied that a person who has been summoned to attend as a juror is entitled to decline to undertake jury service, he shall, upon application made by or on behalf of that person supported by such evidence as the Sheriff may require, excuse that person from attendance in compliance with the summons.

(3) For the purposes of subsection (2), a person is entitled to decline to undertake jury service if he is a person of a class mentioned in the fourth schedule.

(4) An application under this section to be excused from attendance as a juror must be made before the first day on which the person summoned is required by the summons to attend as a juror.

I expressed some concern in the second reading stage in relation to the power of the Sheriff to excuse, for reasonable cause, a person from attendance for jury service and I indicated that the way in which new section 16 was drafted and the very substantial variations to the third schedule meant that more people were likely to be in difficulties in respect of attendance at trials, whether short or long. Therefore, it appeared to me to be appropriate to ensure that at least a group of persons in the community who might have special difficulties could obtain an automatic exemption if they so wished—not to make them ineligible for attendance but to allow them to accept the obligation if their time and circumstances permitted. However, if there were particular

difficulties, such as carrying on a small business, operating a professional practice, or being engaged in one of a number of other activities, such as being a student at a university or college of advanced education, those people could give notice to the Sheriff, and that in itself would act as an exemption for the purpose of the summons for jury service.

The mechanism provided in the amendment is really an indication that, if the Sheriff is satisfied that a person who has been summoned to attend as a juror is entitled to decline to undertake jury service, the Sheriff may excuse that person from attendance in compliance with a summons if that person makes application to the Sheriff to be excused. The category of persons who may be entitled to decline in that context are those set out in a proposed fourth schedule. I do not profess to have a comprehensive list in the schedule, but the list is taken largely from the present third schedule to the Act which presently renders exempt certain groups of persons in the community. I understand that that has been construed to mean that they are ineligible to serve on a jury.

I want to give at least a more likely basis for exemption than the provision in new section 16, under which there can be an application to the Sheriff endeavouring to establish a reasonable cause, which is not defined. If the Sheriff does not allow the application, the person may then go to a judge. There may be a variety of opinions among the judges to the extent that there may be no consistency of application of the 'reasonable cause' provision of new section 16. I move the amendments in an endeavour to provide a more certain basis upon which people can be exempted from jury service.

The Hon. C.J. SUMNER: The Government opposes the amendment. The philosophy behind this Bill was to try, as far as eligibility for jury service was concerned, to restrict as far as possible the exemptions that are available to people. The Government believes that a jury as an important institution in our judicial process should, as far as possible, reflect the community. That was the rationale behind reducing the minimum age limit to 18 years, accepting the amendment moved by the Hon. Mr Griffin to increase the maximum age limit to 70, and restricting exemptions from jury service to a very limited and narrow range of people, such as the Governor, members of Parliament, members of the Judiciary and the police—in other words, people involved or potentially involved directly in the administration of justice.

It is on that basis that we believe that the net should be cast as wide as possible. There should be no automatic *prima facie* case for exemption, apart from those people to whom I have referred. That being the case, I do not see that a certain group of people should have the right to decline jury service when other people do not have that right. The problem with the honourable member's list is that I believe that it is to some extent an arbitrary list. Students who attend a university or a college of advanced education during the day may decline jury service, but a student at a college of technical and further education, taking a trade or any other course during the day, may not decline. Therefore, one group of students could decline to undertake jury service but another group would not have that right.

The same argument could be applied to managers and officers of banks—what about managers and officers of building societies, credit unions and the like? Why should that sort of distinction be drawn in regard to nurses and nurses aides, and to radiographers and electrocardiograph operators? Medical and hospital staff are not mentioned; physiotherapists may decline but chiropractors may not decline.

The provisions of new section 16 are considered to be broad and flexible enough to cater for the people to whom the honourable member would accord a special status, and all other people who may be equally deserving of consideration. I outlined in the second reading reply the kind of information on which the Sheriff would act and the reasons that he considers reasonable cause to exempt people from jury service. I believe that that is sufficient. New section 16 will empower the Sheriff to excuse a person from attendance if he is satisfied on the basis of information verified by a statutory declaration that the person should be excused by reason of ill health, conscientious objection or any other reasonable cause. There may be an appeal from a decision of the Sheriff to a judge if a person is aggrieved by the decision of the Sheriff not to exempt him.

As I said, exemptions are commonly granted in the circumstances I outlined in my reply to the second reading stage. I believe that the administration of the Act by the Sheriff in that way is satisfactory without our creating a whole host of exemptions from jury service. I believe that such exemptions would undermine the basic principle in the Act.

The Hon. R.I. LUCAS: I listened with interest to the response from the Attorney-General. I wonder whether he is in a position to indicate—I know that he cannot give a definite 'Yes' or 'No' answer—the sort of situation where there is a student who is studying at a college of advanced education, TAFE or a university who is coming up for exams and who is called up for jury duty, or the situation of a pharmacist, or someone like that, who is compelled to be present on certain premises for a business to operate. If he or she is required for jury service and there will be no pharmacist on the shop premises, the pharmacy cannot continue just with a shop assistant. Does the Attorney imagine that that is the sort of reasonable cause where the Sheriff would allow an exemption?

The Hon. C.J. SUMNER: I understand that the current practice with respect to students is to provide them with an exemption for a certain period. I imagine that this is the way in which the Sheriff will act in future. Obviously, if a medical student is called up at the end of October to do November jury service and will be in the middle of exams in November, the Sheriff would exempt that person. However, what he might say is that the person is exempted for November but ask whether they are available in January or at some other convenient time. That is the way this has operated in the past with respect to those sorts of persons, and is the way in which I would expect it to operate in the future. Similarly, an exemption would be granted for a person running a one person business. Obviously, if the Sheriff felt that the person was able in future to make some alternative arrangement then he would ask the person in that one person business whether that would be possible. If a business is clearly a one person business and if a month away from it on jury service would completely undermine its viability, then an exemption would be granted. However, the basic principle is valid; namely, that we should try to ensure that a jury reflects a cross section of the members of the community. Until the present time there have been too many automatic exemptions.

The Hon. R.I. LUCAS: What the Attorney is saying is that the current practice is as he has outlined and is likely to continue—that in the case of a one person business, such as a subcontractor or a pharmacist, that is the current practice and is likely to continue?

The Hon. C.J. SUMNER: Yes, that is the situation. That would be a reasonable cause. What we are saying is that there are no automatic exemptions for whole lists of people who were previously exempted. We do not believe that that is justified.

The Hon. K.T. GRIFFIN: I still believe that it is important to have something more than reasonable cause, but if on the voices I lose my amendment I indicate that on this occasion I do not propose to call for a division because I do not think I have the numbers to carry the amendment, and time is moving on. However, I hope that the Sheriff will be sensitive to the way in which exemptions are granted, if this amendment is lost on the voices, because I would hate to see ordinary people being prejudiced in their occupations and studies because of the requirement to serve on a jury when there were quite obvious reasons why they should not. I hope that the Attorney-General will make sure that the Sheriff is aware of this point of view.

The Hon. C.J. SUMNER: I will make sure that the Sheriff is aware of the points raised by the honourable member. I believe that he will treat the matter sensitively. Clearly, if he does not and if problems arise, people will complain about the practices of the Sheriff and we will have to reconsider the matter.

Amendment negatived; clause passed.

Clause 15 passed.

Clause 16—'Questionnaire to be completed and returned by prospective jurors.'

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

Page 4, after line 32—Insert new subsection as follows:

(a) A questionnaire prescribed for the purposes of this section shall not contain any more questions than are necessary to ascertain from a person to whom it is sent—

(a) the full name, address, age and occupation of that person;

(b) whether that person is qualified for jury service under this Act;

(c) whether that person is, or considers that he is, ineligible for jury service under this Act.

I have made the point that the questionnaire is to be prescribed by regulation. There is no indication as to what will be in that questionnaire and there is no limit on its extent. I understand that it is not intended to do anything more than use that questionnaire to establish eligibility and availability for jury service. If that is the case, I believe that it ought to be spelt out. What I am proposing is not that the questionnaire be included as a schedule (that would mean that it would become an inflexible document) but that we specify those matters that the questionnaire may cover when it is prescribed by regulation. I believe that the Bill ought to limit the questionnaire to questions that are necessary to ascertain from a person to whom it is sent the full name, address, age and occupation of that person, whether qualified for jury service and whether the person is, or considers that he is, ineligible for jury service under the Act. That means that the questionnaire is specifically limited to the Act. I hope that the Attorney-General will be able to accept that as a reasonable limitation on the regulations that may be prescribed in respect of that questionnaire.

The Hon. C.J. SUMNER: I have outlined the policy with respect to this matter. There is no question of deviating from it. The questionnaire will come before the Parliament and before the Joint Committee on Subordinate Legislation. Obviously, if the Sheriff goes beyond what is necessary for the purposes of the Act, the regulations will be *ultra vires,* and might be struck down in the court and challenged. They would also be subject to criticism in the Parliament. I do not believe that the honourable member's amendment should be accepted. It is a little narrow. For instance, one question (and I provided the honourable member with the sort of questionnaire that the Sheriff had in mind based on the UK questionnaire) that could be included that would not be provided for by the honourable member's amendment would relate to requests for deferment due to unavailability of the juror during the proposed period of service. That could well be included in the questionnaire in order to help the proposed juror.

There is no intention to go beyond what is necessary for purposes of the Juries Act. The questionnaire will have to be included in regulations, and I think that that is something that the Parliament still has surveillance and control over. For that reason I oppose the amendment.

The Hon. K.T. GRIFFIN: That may well be the case that it comes before the Parliament, but Parliament can only disallow it—Parliament cannot amend it. If one looks at proposed section 25 there is no limitation at all on the questionnaire which may be prescribed. Proposed section 25 (1) states:

At any time after the preparation of an annual jury list, the Sheriff may send to any person whose name appears on the list a questionnaire in the prescribed form to be completed and returned by that person.

So, there is no limit on the ambit of the questionnaire. I believe that it is necessary, if there is to be a questionnaire to prospective jurors, that the scope of the questionnaire be specifically limited by Statute and not left to the only remedy of a Parliament, which is to move disallowance. Disallowance is all very well if one has the numbers. At the moment there may be the numbers to disallow such a regulation, but what we are putting into the Statute is a very wide power which, until the Act is amended, will be there regardless of the numbers in each House of Parliament. For that reason I believe there should be some limitation on the material that can be contained in a questionnaire.

The Hon. C.J. SUMNER: I think that the section would be read down to deal with matters contained in the Act. It may be that we can include in the Government amendment some words to that effect.

The Hon. K.T. Griffin: All I want to do is to have it limited to information necessary to satisfy the requirements of the Act—nothing more than that.

The Hon. C.J. SUMNER: It may be possible to do something of that kind. I am just having inquiries made. I move:

That consideration of clause 16 be postponed and taken into consideration after clause 38.

Motion carried.

Clauses 17 to 34 passed.

New clause 34a—'Penalty for soliciting information from jurors.'

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

Page 8, after line 10—Insert new clause as follows:

34a. The following section is inserted after section 83 of the principal Act:

83a. (1) A person shall not solicit from a juror or former juror—

(a) any information as to deliberations of a jury of which the juror of former juror is, or was, a member;

or

(b) any information as to whether—

(i) the juror or former juror;

or

(ii) any other member of the jury,

concurred or did not concur in a decision or verdict of the jury.

Penalty: Two thousand dollars or imprisonment for three months.

Events over recent years have caused some concern as to the intrusions that are made into the deliberations in the jury room. I have said and say again that the relevant time for the jury is the time at which it makes its decision in the jury room and announces it in the court as part of the legal proceedings. It does not matter what a juror thought during the course of the deliberations in the jury room; it is a matter of how a juror votes in reaching a decision as to innocence or guilt.

It is not relevant subsequently to inquire what may then be the view of a juror or former juror as to the decision

that he or she participated in. It is totally irrelevant because it is divorced from the proceedings on which the jury has made a decision. I think that we have to do as much as we possibly can to ensure that jurors are protected from inquiries soliciting information about what goes on in a jury room and about the attitudes of jurors. Fortunately, it does not happen very much in Australia, particularly in South Australia, but it happens quite extensively in the United States and other countries where juries are used.

This provision will at least put some hurdle in the way of that sort of inquiry and threat to the jury system. It will not be 100 per cent perfect, but it will go a long way to ensuring that jurors are able to make their decisions untroubled by subsequent inquiries or possible criticisms of them personally or of the decisions in which they have participated. It does not impinge on the right of the media in any way other than to the extent that no attempt may be made to solicit any information. It does not put a penalty on a juror. In fact, it may assist the court from time to time to reinforce the obligations of jurors in respect of the part they play in criminal trials.

The Hon. C.J. SUMNER: This is a difficult area, but the Government does not feel able to support the honourable member's amendment which, I believe, is too broad. It creates an offence where, traditionally in this country, contempt of court has been used as the potential sanction against anyone who has—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Well, it can be used after. The problem I see is that there is some flexibility in our system that, I believe, has merit. I do not believe that overall in South Australia or Australia this problem has arisen to any great extent. Therefore, I do not believe at this stage that any legislation is necessary to go beyond what is the current law. I suppose, technically, the amendment could preclude any legitimate research about the jury system. It might catch a spouse who asks a juror what went on in the jury room during the day and how they got on—the normal sorts of discussion about cases which occur in private and which are normally protected because of the general conventions in the community about confidential discussions. It could be broad enough to catch purely innocent behaviour.

I do not think a case has been made out to protect jurors as such. Obviously, if they are approached they do not have to answer questions. As I said before, I do not believe that the problem that the honourable member has outlined has reached such proportions in Australia to indicate that the jury system is under threat. A recent Queen's Bench judgment in the United Kingdom Court of Appeal in the *Attorney-General v. New Statesman and Nation Publishing Company Limited,* concerning a case of contempt of court, stated:

> In our judgment, therefore, any activity of the kind under consideration in this case which—to use the language of the Attorney-General's statement—tends or will tend to imperil the finality of jury verdicts or to affect adversely the attitude of future jurors and the quality of their deliberations is capable of being a contempt. But that is not to say that there would be of necessity a contempt because someone had disclosed the secrets of the jury room. What then is the test to apply in deciding whether or not such an activity is or is not a contempt of court?
>
> What then is the test to apply in deciding whether or not such an activity is or is not a contempt of court?

The case then goes on to discuss in what circumstances disclosure from the jury room would constitute a contempt, and they conclude:

> This passage of Lord Edmund-Davies supports our view that each case of disclosure has to be judged in the light of the circumstances in which the publication took place. In the instant case—

this is the case I am referring to—

> the sole ground on which the allegation of contempt is based is the publication of some of the secrets of the jury room in this particular trial. Apart from that, there are no special circumstances which, it is suggested, call for condemnation.

It appears that disclosure from the jury room, and presumably the soliciting of disclosures from the jury room, can constitute contempt of court even after a case has been finalised, but it really depends on the circumstances of the soliciting of the information or the disclosure of the deliberations of the jury room. Rather than creating a statutory offence, it is better left to the flexibility of the courts and the Attorney-General of the day to determine whether proceedings should be taken for contempt, and then it is possible for the court to assess whether or not there really was a contempt. That procedure provides greater, and I believe important, flexibility in our judicial system. I think the law is adequate. It is more flexible than the honourable member has outlined and, for that reason and emphasising the absence of any real difficulties in this country, I do not believe the amendment should be accepted at this stage.

The Hon. K.T. GRIFFIN: I am disappointed that the Attorney does not believe the amendment should be accepted at this stage. In some instances in South Australia and in other States jurors have been questioned in respect of their attitude to particular matters in the jury room and their own points of view. I predict that it will become more prevalent in the future and, if it does, it will certainly deter citizens from wishing to undertake their public responsibility to serve on juries. I do not think it is too wide at all. If this provision is not passed, I hope some further consideration will be given by the Government to ways in which the responsibilities of jurors can be reinforced to jurors and prospective jurors because to some extent the problem can be resolved by ensuring that jurors understand their responsibilities both during and after a trial. I intend to press on with the new clause because it is appropriate in the context of the matters to which I have referred.

The Committee divided on the new clause:

Ayes (6)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, K.T. Griffin (teller), Diana Laidlaw, and R.I. Lucas.

Noes (7)—The Hons G.L. Bruce, B.A. Chatterton, J.R. Cornwall, M.S. Feleppa, K.L. Milne, C.J. Sumner (teller), and Barbara Wiese.

Pairs—Ayes—The Hons R.C. DeGaris, Peter Dunn, C.M. Hill, and R.J. Ritson. Noes—The Hons Frank Blevins, C.W. Creedon, I. Gilfillan, and Anne Levy.

Majority of 1 for the Noes.

New clause thus negatived.

The CHAIRMAN: I point out to the Committee that we moved a little too swiftly in respect of clause 32 which, being a money clause, is in erased type and, as such, should not have been the subject of a vote. We will make the note that we withdraw our vote on clause 32.

Clauses 35 and 36 passed.

Clause 37—'Repeal of third schedule and substitution of new schedule.'

The Hon. K.T. GRIFFIN: I will not proceed with my amendment on file to line 18, which is consequential upon an earlier amendment to clause 14 that was not successful. I move:

Page 8, line 22— After 'Executive Council' insert 'and their spouses'.

I have made the point that the spouses of members of Executive Council ought to be ineligible for jury service. The Executive Council comprises Ministers of the Crown who are the executive arm of Government and, in one way or another and directly or indirectly, may be involved in the administration of justice, the prison system or areas of public responsibility associated with them, including the responsibilities given in respect of indeterminate sentences of imprisonment. It is quite improper for the spouses of members of Executive Council to be eligible to sit on juries

in consequence of the powers and responsibilities of members of Executive Council.

The Hon. C.J. SUMNER: We are exempting spouses of the Governor, of the Lieutenant-Governor, of members of the Judiciary or magistracy, of justices of the peace and members of the Police Force. So, we are not adopting the principle that in no circumstances are spouses to be ineligible for jury service. It is a matter of where one draws the line. There is some merit in what the honourable member says about members of the Executive Council, but I oppose it in the case of legal practitioners; that is in another amendment that he has on file. I will accept the amendment.

Amendment carried.

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

Page 8, line 26—After 'practising as such' insert 'and their spouses'.

This amendment relates to legal practitioners' spouses, that is, the spouses of those who are actually practising as legal practitioners. It is important that the spouses of legal practitioners be ineligible for jury service. I have made the point during the second reading debate about the spouse of a legal practitioner who acts for a person charged with an offence. While it may be remote that the spouse would actually sit on that case, it is not so remote that the spouse and the legal practitioner will be at least familiar with particular cases and that the spouses will be subject to some sort of influence, directly or indirectly, as a result of the legal practitioner's own practice. It is basically wrong in those circumstances for spouses to be eligible to sit on juries.

The Hon. C.J. SUMNER: As I indicated before, I oppose this amendment. It is casting the net too widely. Many legal practitioners would not even know what a criminal court looks like, and probably would not want to know. To exclude the spouse of a legal practitioner just because of that connection is going too far. The distinction is that members of Executive Council may need to make a determination about a matter, as the Hon. Mr Griffin mentioned, on a petition for mercy because of the prerogative powers of the Governor and Executive Council in relation to prisoners. A situation of conflict could arise in that circumstance.

I do not believe that the same fear really exists with respect to legal practitioners unless the legal practitioners themselves are actively involved in or connected with a particular case, in which case objection could be taken to the spouse of that practitioner being involved. It should be left at that, rather than casting the net as broadly as the honourable member wishes to. That is too broad and would exclude many people who would probably be competent at jury service.

The Hon. K.T. GRIFFIN: In view of the hour, I will not divide on the issue if it is lost on the voices, but I still believe that it is important to exclude those spouses, notwithstanding the remarks that the Attorney has made.

Amendment negatived.

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

Page 8, lines 28 and 29—Leave out all words in these lines and insert 'Persons and the spouses of persons who are employed, or who have, within the period of two years immediately preceding the date upon which their eligibility or the eligibility of their spouses for jury service falls to be determined, been employed, in a department of the Government that is concerned with the administration of justice or the supervision or punishment of offenders,'.

This category and the next relate to persons employed in the Public Service, that is, within a department of the Government that is concerned with the administration of justice or the supervision or punishment of offenders. The second category, which obviously we will not vote on immediately but on which we will soon, relates to those who are involved in the administration of courts or the recording or transcription of evidence taken before courts. This amendment includes spouses because of the direct relationship between the responsibilities of the public servant and the spouse, and there ought not be anything within the administration of justice that can at least be the subject of comment as to some conflict or undue influence.

I have also sought to include those persons who were public servants within two years immediately preceding the date on which their eligibility for jury service falls to be determined. I have also sought to extend the departments covered to those that deal with the supervision of offenders. I deal specifically with former employees in a department only because of the nature of the judicial process. At the time of a trial, a person who was a departmental officer may well have been transferred, but may still have some influence in respect of that matter. I believe that the amendment is appropriate.

The Hon. C.J. SUMNER: I cannot accede to the honourable member's proposition. It is difficult to understand why a person should be penalised in respect of his service on a jury by his previous employment. It is even more difficult to understand why the spouse of a person should be similarly disadvantaged.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: If he were involved in a case he would be ineligible under the normal rules.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: If he were involved in a case, that would be the end of the matter. The same applies to a spouse of a legal practitioner, on the same reasoning as I put forward before. A judge would not allow a person of that kind to be empanelled on a jury, clearly under the inherence of powers relating to judges.

The Hon. K.T. Griffin: It might be subject to challenge.

The Hon. C.J. SUMNER: I do not see that there is any real problem. If a person was directly involved in a case, he would not be allowed to sit in any event, even if he was not technically ineligible. I believe that this casts the net too wide.

The Committee divided on the amendment:

Ayes (6)—The Hons J.C. Burdett, M.B. Cameron, L.H. Davis, K.T. Griffin (teller), Diana Laidlaw, and R.I. Lucas.

Noes (7)—The Hons G.L. Bruce, J.R. Cornwall, M.S. Feleppa, Anne Levy, K.L. Milne, C.J. Sumner (teller), and Barbara Wiese.

Pairs—Ayes—The Hons R.C. DeGaris, Peter Dunn, C.M. Hill, and R.J. Ritson. Noes—The Hons Frank Blevins, B.A. Chatterton, C.W. Creedon, and I. Gilfillan.

Majority of 1 for the Noes.

Amendment thus negatived.

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

Page 8, lines 30 and 31—Leave out all words in these lines and insert 'Persons and the spouses of persons who are employed, or who have, within the period of two years immediately preceding the date upon their eligibility or the eligibility of their spouses for jury service falls to be determined, been employed, in the administration of courts or in the recording or transcription of evidence taken before courts,'.

I will not divide on the amendment if it is not carried on the voices, because I take the previous division as an indication of the numbers. This amendment reflects the concept of the amendment that has just been negatived, but I move it for the record.

Amendment negatived.

The Hon. K.T. GRIFFIN: I will not move my further amendment to insert a new schedule, because it is dependent on an earlier amendment that was negatived.

Clause as amended passed.

Clause 38 passed.

Clause 16—'Questionnaire to be completed and returned by prospective jurors'—further considered.

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

Page 4, line 31—After 'questionnaire' insert 'relating to matters contained in this Act'.

Proposed new section 25 (1) will read:

At any time after the preparation of an annual jury list, the Sheriff may send to any person whose name appears on the list a questionnaire relating to matters contained in this Act in the prescribed form to be completed and returned by that person.

To some extent that overcomes the objections of the Hon. Mr Griffin about the potentially open ended nature of the questionnaire. It restricts it to matters relating to the Act. I believe that, although it may not be completely what the honourable member wants, it at least ensures that the questionnaire cannot be at large. Of course, it would still be subject to disallowance by regulation.

The Hon. K.T. GRIFFIN: I am prepared to support that amendment. It is not exactly what I wanted, but it goes a long way towards resolving the difficulty that I foresaw in relation to this clause, because it limits the questionnaire to matters referred to in the Act. Rather than pursuing my amendment, I am prepared to accept the Attorney's amendment. I seek leave to withdraw the amendment that I moved.

Leave granted; the Hon. K.T. Griffin's amendment withdrawn.

The Hon. C.J. Sumner's amendment carried; clause as amended passed.

Title passed.

Bill read a third time and passed.

[Sitting suspended from 6.5 to 7.45 p.m.]

ACTS INTERPRETATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 11 September. Page 707.)

The Hon. C.J. SUMNER (Attorney-General): I thank honourable members for their contributions. There seems to be one major dispute in this matter relating to the question of to what extent judges should be able to take into account extrinsic aids such as the question of *Hansard* and reports of law reform commissions and the like which may have led to a particular statutory enactment. That being the major issue of contention, I am sure that it will be fully canvassed in Committee. Accordingly, I will not contribute further at this stage but leave my response until the Committee stages of the Bill.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Repeal of s.22 and substitution of new sections.'

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

Page 1, lines 33 and 34, and page 2, lines 1 to 11—Leave out proposed new section 22.

My amendment provides for the deletion of proposed section 22, which allows the courts, any tribunal or any person acting judicially to have regard to various material that has not been voted on by the Parliament. That material can be examined and taken into consideration for the purpose of resolving questions affecting the construction of an Act. I am very much opposed to the provision in this Bill which will bring before the courts material that has not been the subject of a vote in this Parliament. It will be much less an aid to construction as a further means of confusing the interpretation of legislation, because there are many unresolved questions as to exactly what is to be taken into consideration in determining the construction of a Statute.

The courts are to have regard to the punctuation appearing in the text of an Act as printed by the Government Printer. Let me remind honourable members that this Council does not vote on punctuation. The punctuation is there partly as a result of the drafting by the Parliamentary Counsel and subsequently because of decisions taken outside of this Council and outside the House of Assembly by the Government Printer on the instruction of the Parliamentary Counsel. Therefore, it is all very well to say, 'Let us have regard to the punctuation,' but that punctuation has not been the subject of any deliberation in either House of Parliament.

Does that mean now that we should really give detailed consideration to the punctuation and that we should vote on any comma, full stop, semicolon, colon, or whatever? And if it is to be an aid to interpretation, then although it does not formally form part of an Act it must necessarily have a relation to interpretation and therefore we will have to consider it in future and make a conscious decision as a House as to whether or not the punctuation is in the right place.

Let us turn to marginal notes, because marginal and other notes to the text of the Act as printed by the Government Printer are to be taken into consideration, although they do not necessarily form part of the Act. Honourable members will know that the Parliamentary Counsel drafts the marginal note and we do not vote on it. Also, it is capable of being changed between the time it first appears, the time it is voted upon, and the time it ultimately appears in the Royal Arms form of the Bill. There are other notes which periodically appear—

The Hon. C.J. Sumner: Marginal notes are in the Bill.

The Hon. K.T. GRIFFIN: Of course they are. I am saying that. I am saying that the courts are to take marginal notes into consideration.

The Hon. C.J. Sumner: But they are in the Bill.

The Hon. K.T. GRIFFIN: That is what I am saying.

The Hon. C.J. Sumner: What is wrong with that?

The Hon. K.T. GRIFFIN: They do not form part of the Act. They are not voted on by the Parliament. They are inserted by the Parliamentary Counsel and may be subject to change before they are finally printed in the Royal Arms copy. I am saying that we will now have to consider the drafting of the marginal notes if they are to be taken into consideration in determining the construction of legislation. I think that that is a ludicrous proposition. Also, the courts are to take into account notes to the text of the Act as printed by the Government Printer. Who puts the notes in the Bill or Act? It is certainly not the Parliament. They may, in fact, be put in after the Bill has passed the Parliament as a cross reference to some other piece of legislation.

What this Bill says is that those notes, which have not been the subject of any vote within the Parliament, are to be taken into consideration in determining the construction of legislation. The point is that they are not subject to a vote, so perhaps they ought to be. We will certainly give very careful consideration to what appears in any notes in future if this Bill passes. Then, also, we have the reports of debates and proceedings of the Parliament. I have already said that that means the courts will be bombarded with all of the debates that take place in the Parliament in considering a Bill and any amendments to the Bill, or any amending legislation to an Act of Parliament.

What the courts will have to do, if there is some difficulty about construction, is maybe even go back 50 years to the date of the passing of the original Act of Parliament and follow it right through the Parliamentary process, following every amendment that occurs. How many times has the Road Traffic Act been amended each year?

The Hon. Diana Laidlaw: The Local Government Act?

The Hon. K.T. GRIFFIN: And the Local Government Act. It is crazy. What will happen is that every lawyer who

has to advise on a particular provision will have to look at all the Parliamentary proceedings not only in respect of one Bill but in respect of all legislation which comprises a final Act which is presently current. One can imagine the work that will be involved in that and the difficulty there will be for the courts in trying to balance the comments in respect of the principal Act and the comments made concerning amendments to the legislation at some subsequent time.

Whose point of view does one take into account, in determining the construction, from the reports of the debates and proceedings of Parliament? Let me remind members of the process by which legislation goes through the Parliament. The Bill is introduced in one House and there is a second reading explanation which contains what the Government says is the subject of the Bill. We then have debates. If the Government introduces a Bill and says that this is what it is intended to do, but in fact it does not do that, then as a Parliament we are going to have to look very carefully at the construction and make sure that the Bill reflects what is intended. It may not necessarily be that every member of a House of Parliament agrees that that should be the object of the legislation.

If the Attorney-General introduces a Bill and says that this is what the Bill is meant to do, and I or anyone else in Opposition disagrees and we point out where we believe the Bill should go—and it is sometimes out the window—and if it passes then we will certainly have made some contribution to the debate on what the Bill should be achieving. It may be that on a controversial issue 20 members of this Council make a contribution on the Bill and each contribution may be different.

The Hon. Diana Laidlaw: A different interpretation.

The Hon. K.T. GRIFFIN: A different interpretation. It certainly will be a different contribution, but it may reflect on different aspects of a particular provision. What happens in those circumstances, where 20 different contributions are made at the second reading stage? Does the court have to look at all those if there is a difficulty in interpretation? Do legal practitioners who have to work with the legislation and advise their clients, who may have competing interests, have to go back and read all this—and that is only in one House at the second reading stage.

Let us take it further. The Minister then replies at the second reading stage and may come out and say something different from what he said when he introduced the Bill. The Bill then goes into Committee and there may be a whole range of amendments moved by the Government and the Opposition. Then there will be contributions on each amendment, and if there is a whole string of amendments—as there was on the Local Government Act Amendment Bill—then how do we make a decision about the intention of Parliament if there are a number of contributions in relation to each amendment?

The contribution to an amendment may be a contribution on that amendment as it relates to the principal clause and the amendment may not pass. What is to be taken into consideration in that context? Having been through the Bill and through all the amendments and maybe having spent days debating amendments, we come out with a Bill. The Bill then comes out of Committee. It may be that some members wish to speak at the third reading on the Bill as amended. That contribution may seek to put on record an objective for the Bill that is different from the way in which the Bill was proposed in the first instance.

In all of that context in one House, what do the courts have regard to? How can they discern an objective or purpose, or obtain some assistance in the construing of that legislation when they have to take all this into consideration? That is not the end of it. From one House the Bill goes to the other House and goes through all that again. It may be that there are more amendments to the Bill. In that context they will be debated in the other House and there will be another bundle of Parliamentary debates for the courts to take into consideration.

If the Bill originated in the Council, it will go to the House of Assembly and perhaps be amended, and come back here. We may decide that we will not accept some of the amendments. We may speak to that, then the Bill will go backwards and forwards until there is a residue of disagreement. Then the Bill goes to a conference of managers where there is a lot of off the record discussion as to what the Bill means, what the amendments seek to do, and what sort of compromise might be considered. None of that is on public record, and quite rightly so.

After a Bill has been to a conference it will come back to the House and then there will be further debate. The managers from the Legislative Council may all want to have their say on the compromise that has been reached. What they contribute at that point to a Bill, which may well be radically different from the Bill originally introduced, obviously has to be taken into consideration in determining the object or in assisting with a construction of that legislation.

Let us say that it is going to be a difficult task. If the courts have to take into consideration all that debating and then, if the Act is later amended, perhaps comprehensively, the whole business is repeated. The courts will then have to take into consideration two sets of Parliamentary debates on the principal Act and the amending Bill.

We now turn to reports of Parliamentary Committees, law reform commissions or committees, boards or commissions of inquiry and other similar bodies. It may be that there is a report of a Parliamentary Committee which is the basis for some legislation. The Parliamentary Committee's report may not be a particularly extensive one, but it may refer to the defect in the law that it seeks to remedy. It is then up to a private member or the Government of the day to introduce the legislation if it wants to pick up the recommendations of any Parliamentary Committee. It may not, in fact, pick up all the proposed amendments. It may move amendments that are totally different from those recommended by any report of the Parliamentary Committee.

How will the courts be able to satisfactorily have regard to the report of a Parliamentary Committee to assist with construction when the legislation is different from that recommended in the report? The same applies to law reform commission or committee reports. I remember a number of occasions where, as Attorney-General, I accepted some of the recommendations of a Law Reform Committee report and not others. If we are to take into consideration a report of the Law Reform Committee it may not be an accurate basis to rely on in construing the legislation that the Government ultimately brings in.

Then there are boards or commissions of inquiry and other similar bodies. They are not identified. The important part about paragraph *(d)* is that nowhere are the reports of Parliamentary committees, the law reform commissions or committees, boards or commissions of inquiry or other similar bodies voted on by this Parliament. They are not voted on, and therefore it is my view that they should not be relied on as an aid to construing legislation that may flow either directly or indirectly from such reports.

Treaties and international agreements also present a problem because they are entered into by the Commonwealth Government as part of its external affairs power. It may have no consultation at all with the States as to the form of a treaty or international agreement or, in fact, as to whether or not it ought to be entered into by the Commonwealth. On other occasions there may well be some discus-

sions with the States, but ultimately it is a decision of the Commonwealth.

Let us take the case of the Anti Discrimination Bill now before us, a Bill that relates to some extent to the United Nations Convention on the Elimination of Discrimination against Women. In the context of that Bill are we now to take into consideration the international covenant in interpreting the provisions of the Anti Discrimination Bill? We have had no chance to debate the international covenant here or to have a say about what should go in it, other than through the Executive arm of Government which in that instance participated in the Ministers' meeting on human rights.

Parliament has not been in any way involved in the deliberations on that covenant or the decision to enter into it. To me, it is quite foreign to what should be proper statutory interpretation that we should have to take into account a treaty or international agreement which has never been the subject of a debate in Parliament, of a report, or even in many instances of discussion with the State Governments.

If we proceed with the proposal which is in this Bill and which I believe to be ill conceived, undoubtedly we will place on legal advisers an almost impossible burden, as well as on their clients an almost impossible cost, of researching adequately the subject of the request for advice, and we will place on the courts a more significant burden that will mean that they will have to have regard to all of the Parliamentary debates. Even if they do, will they be able to discern any common sense or obtain any guidance from all that may be said in Parliament—said without any reference to precision or to the technical meaning of words.

I am appalled that such a provision should be considered for incorporation in the law relating to statutory interpretation. I know it has been included in the Commonwealth and supported by the Liberal Party and the Australian Democrats, but I opposed it at that time and I continue to oppose it because I believe that it is ill conceived and will make a mess of the whole area of statutory interpretation. It may be that the courts themselves will say, 'We are not going to gain any assistance from this so we will turn our backs on it.' If they do, that is great, but I suspect that they will at least have to put on the appearance of looking at this sort of material in the interests of ensuring that justice is not only done but is seen to be done.

There are other problems with this provision—it is retrospective in effect. That means that even though Parliamentary debates have not previously been relevant to interpretation of Statutes passed in the past, hereafter they will be relevant. That is an incredible position. It means that at a time when the intention of Parliament was discerned from the written word, which was voted on by Parliament, we now find that there is much extraneous material coming into it.

There is one issue in particular where this may be relevant. I do not know whether or not the Government has thought about it, and it may well have done so because it is a very important issue; that is, the position of the President and the Speaker. The Chamber will remember some controversy about whether or not the President had the right to concur or not in the second or third reading of any Bill. The Government argued that it was limited to constitutional questions, and it referred to the second reading speech of the then Premier (Hon. D.A. Dunstan) when he introduced the Bill in another place and to another statement made by him several days later when he corrected what he said in the first speech. In that instance, what did he mean? I am concerned that if this Bill passes it will be used by the Government at some time in the future to challenge the power of the President. I put that firmly on record.

The Hon. C.M. Hill: There's no doubt about that.

The Hon. K.T. GRIFFIN: I do not think that there is any doubt about it.

The Hon. C.M. Hill: They're putting this Bill through for one purpose only.

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

The Hon. K.T. GRIFFIN: It is not paranoia—it is a genuine reference to the way in which this Statute will be used. It is my duty to raise the point so that it is before the Council and on the public record.

The Hon. C.J. Sumner: Is that why it went through in Victoria and the Commonwealth with Liberal Party support?

The Hon. K.T. GRIFFIN: I have indicated that in Victoria—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: I have made no secret of the fact that I disagree—and violently disagree—with the decision taken at the Commonwealth level and the decision in Victoria as well.

The Hon. C.J. Sumner: Flat earth!

The Hon. K.T. GRIFFIN: Flat earth? Six feet under is the proposal of the Government. The public at large will be placed in an intolerable position. I mentioned in response to an interjection by the Hon. Diana Laidlaw in the second reading debate that local government will be affected. The hundreds of members of local government either as elected or staff officers will have to come to grips with what was said in Parliament in determining an appropriate interpretation for the Local Government Act.

The Hon. Diana Laidlaw: They're not pleased about it.

The Hon. K.T. GRIFFIN: I cannot imagine that they would be. Other legislation will have equally as important an effect on the community, where ordinary men and women will have to come to terms with what is said in Parliament. It is not only a burden on legal advisers and the courts—it is a burden on ordinary people. Certainly, I take great exception to material that has not been the subject of a vote in this Council being considered in determining the intention of Parliament. What should be considered is only the written word that has been passed through Parliament by votes of members in both Houses. That is the intention of Parliament—not what the Attorney or any other Minister or member might say. That is all irrelevant in determining the intention of Parliament from the written word.

If there are problems of interpretation the solution is to come back and amend the legislation to make it clearer—or perhaps not to have even passed it in the first place. The fact is that this is the place where decisions ought to be taken on intention—not in the office of the Parliamentary Counsel or the Government Printer, not by the Law Reform Committee but based on decisions here, and not as the Attorney seeks to do and introduce all this extraneous material that is contrary to democratic right. In fact, it seeks to impose the will of others outside the elected representatives on the courts in the interpretation of this legislation. I violently oppose it and give a commitment that, if it is passed, then in Government I will seek to amend the legislation so that the provision is repealed.

The Hon. K.L. MILNE: The concept of the judges consulting extraneous material is not new. In fact, it is well documented in the middle of the 19th century. From a brief reading of the history of this concept, it appears that the idea of judges consulting extrinsic material was accepted and used in the latter part of the 1800s. It seemed to go out of favour in the early half of the twentieth century, when judgments were made on what the Act said literally, and more lately the idea seems to be growing popular again.

The Hon. K.T. Griffin: It's only because this Government can't legislate.

The ACTING CHAIRMAN (Hon. G.L. Bruce): Order!

The Hon. K.L. MILNE: However, we must realise throughout this debate that we are talking only of where there is ambiguity. We are not talking about judges racing around consulting extrinsic material every time and in large quantities. The Bill is not making it compulsory. It is not committing the court. It says that if there is any doubt the court may do so.

I was talking about ambiguity and the consulting of material. This may happen more these days, not because the Parliamentary draftsmen have suddenly become incompetent but because Bills have become more complex in an attempt to legislate ourselves out of the obvious decline in our western civilisation.

The paper given by Mr Justice Wells on 'Law making and the form and efficiency of legislation' is impressive, but so are the speeches of Senator Gareth Evans and Senator Durack, who hold the opposite view to Mr Justice Wells.

The Hon. C.J. Sumner: And Mr Justice Zelling.

The Hon. K.L. MILNE: Yes. What does cause me some concern is a situation when, first, the prosecution and defence cases have been made and finished and, secondly, the judge is considering his decision and decides to consult extraneous material, which influences his opinion. What happens then? What does the judge do? Does he call the parties together? Does he make the new material available to both counsel, or what? In the report on the Interpretation Bill, 1982, the Legal and Constitutional Committee of the Victorian Parliament had a lot to say on this matter. It said:

> Numerous cases have been cited where frequent recourse to equally numerous extrinsic materials has been had by judges at various levels. As well, judges have acknowledged at conferences and in submissions to the Committee that this is so. For example, at the Australian Law Reform Agencies Conference held in Brisbane in July 1983 Justice McPherson of the Queensland Supreme Court referred to judicial scrutiny of extraneous materials, saying: 'There seem to be two questions. One is whether you look at extraneous matter, and judges often do. The next question, which is the difficult one, is what you do with it when you have looked at it; what weight you give to it.'

Another speaker said:

> What Justice McPherson has just said—that is, that judges do take into account extraneous materials—is extremely important . . . If judges are doing this, it is wrong that they should do so without counsel having a real opportunity to either refute what is put in the extraneous material taken into account by judges, or to accede that it is correct. As long as there is a situation where judges simply take extraneous materials into account, and counsel have no real authority for bringing such matters before the court, the position is that justice cannot be seen to be done because there is no clear opportunity for counsel to argue about the issues taken into account by the judges.

That bothers me. The report goes on:

> In reply, Justice McPherson stated: 'I think that is perfectly correct. May I say that I . . . have looked once at a Parliamentary debate since I have been a judge . . .'

So we are talking all the time about exceptional cases, and there would soon be complaints from the profession of barristers if judges were to take into account extraneous material without telling them, and the judges would be unlikely to do so. I would like the Government to note this weakness in the argument and indicate some time before this debate closes, if it will, that this position will be rectified should it cause trouble and confusion, and that it will be considered in any case. If judges take extraneous material into account and it alters their opinion after the defence and prosecution lawyers have finished, the judge should say something.

The Hon. C.J. Sumner interjecting:

The Hon. K.L. MILNE: I am asking the Government to note this.

The Hon. Diana Laidlaw: You might change your impression of this Bill then?

The Hon. K.L. MILNE: Yes. The Hon. Mr Griffin raised the question of whether punctuation and marginal notes should be considered. As a matter of fact, I always consider them and have helped to alter one or two marginal notes that have been frankly misleading, but I do not think that any serious judge would think that the marginal notes and punctuation made a great difference to his opinion. Everyone must know, and every judge must know, that they are merely a guide. Incidentally, punctuation is important. It has been overlooked to some extent. It used to be much more important in the books that we had to read and examine at school, and it is time that we gave more consideration to it in any case.

The 'Report on the Interpretation Bill of 1982' by the Victorian Legal and Constitutional Committee is very helpful. It traces cases over a long period, both in Britain and in Australia, and it convinces me that this Bill should be given a trial. A limited range of documents could or should be appropriate, not only those that are mentioned in this Bill (which is not all inclusive), but principally formal documents—not informal documents such as notes, pages of altered notes and so on. What is recommended is that the judges should refer only to very formal documents such as *Hansard,* Select Committee Reports, Standing Committee Reports, explanations attached to Acts, and not notes on the backs of envelopes and off-the-cuff statements.

The Hon. Diana Laidlaw: Don't members of Parliament make off-the-cuff statements?

The Hon. K.L. MILNE: Yes. *Hansard* very often contains off-the-cuff statements.

The Hon. Diana Laidlaw: And flippant.

The Hon. K.L. MILNE: Ten minutes either side of this moment will not contain any flippant material. Furthermore, political legislation as distinct from social legislation, if it passes against the wishes of Government, would not be acceptable. The legal profession, the barristers and the judges, recognise that a Bill may well be passed against the wishes of the Government or a substantial Opposition.

The Hon. K.T. Griffin: It can't be passed against the wishes of the Government, because the Government holds the majority in the Lower House and can stop it. One can never pass a Bill against the wishes of a Government.

The Hon. K.L. MILNE: We will see what the committee said. At page 70 of the report, clause 20.38, under the heading 'Political legislation', it was stated:

> 'Political legislation' is defined as 'legislation passed by a Party majority in order to implement Party policy, legislation with which the other Party does not agree'.

That was in the old days, of course, when there were two Parties. It was further stated:

> Here the suggestion is that nothing should be done in the way of providing extraneous materials to grant judges guidance about the intention of Parliament in passing the legislation:
>
> > The framing of an explanatory memorandum is likely to present difficulties. The only kind of memorandum which the majority is likely to support would be one which explicitly underlines the political purpose of the legislation . . . Even if such a memorandum could be drafted and passed—and one's mind baulks at the Parliamentary process of amendment and obstruction—I suspect it would leave the judges with the same dilemma: whether to align themselves with a purposive construction.

This political problem is well known to the Committee. The report sets out a list of 16 arguments, some for and some against the reference to materials. It is stated at page 75:

> The committee has considered these arguments fully, but concludes that, on balance, they do not support the proposition that judges should be restricted in their access to materials that may assist them in interpreting legislation.

I note also that Lord Halsbury, who I believe would be one of the greatest legal minds in Britain, is in favour of this matter in principle, with certain controls and guidelines.

The Hon. Diana Laidlaw: If you think that Lord Halsbury has a greater political mind, in a debate would you naturally put more weight on his judgment than on the judgment of someone else? Do you think that that would necessarily be fair and just?

The CHAIRMAN: Order! The honourable member does not have to answer the interjection.

The Hon. Diana Laidlaw: It might be subjective.

The Hon. K.L. MILNE: It might be subjective to the honourable member, but I recall that, when Mr Harry Alderman, Q.C., had an operation for a tumour on the brain, a piece was taken from his head; the doctors looked in, but it was hopeless, so they put back the piece. One of his friends asked, 'Harry, when they took out that piece, what did they find inside?' and he said, 'A complete set of Halsbury's laws of England.' I believe that that was about right.

I referred to 16 arguments cited by the Committee for or against this principle. The Committee came down, on balance, in favour of the judges' being able to refer to extraneous material. That, in essence, is where we stand. Our Australian Democrat colleagues in the Senate, the Labor Party and the Liberal Opposition voted for a similar Bill in Canberra. I realise that that does not commit us in South Australia, but I believe that, on balance, uniformity of procedure is desirable, especially at the judicial level and where judges move from State to State, sometimes permanently. Therefore, I repeat that I support the Bill.

The Hon. R.I. LUCAS: The Attorney-General calls this Bill the Acts Interpretation Act Amendment Bill, but I believe that a better description of the Bill would be the 'Shaft the President' Bill. The shadow Attorney-General referred in his contribution to the matter with which I will deal in some detail. I have no doubt in my mind that one of the reasons behind the Bill before us is the events of earlier this year in relation to the President's right to have a vote in this Council. I have no doubt that the Attorney-General is seeking through this Bill to deprive you, Mr President, and future Presidents of a vote in this Council on controversial matters.

The Attorney and the Hon. Mr Milne sought to argue that this Bill will be limited to only controversial matters or matters of some moment, but I believe that even the Attorney would have to admit that, if he accepted that limited definition of what this Bill is about, the question of the President's right to vote would certainly be one such matter. As I said, I have no doubt that that is one of the major reasons why this Bill is before us this evening. I refer to the occasion earlier this year and the Attorney's contribution on 12 April after you, Mr President, exercised a vote in this Council. On that day the Attorney-General stated:

> I referred to *Hansard* in my Ministerial statement of 8 December 1983, but I will emphasise one part of it. Mr Dunstan, the then Premier, on 20 June 1973 stated—

and the Attorney-General referred to a statement by a former Premier, Don Dunstan—

> There is only one class of Bill to which this clause refers, that is, Bills to amend the Constitution, because the concurrence of a President or a Speaker does not arise in other circumstances in normal internal proceedings. It arises only under section 8 of the Constitution Act, which requires that a Bill to alter the Constitution of either House be concurred in by an absolute majority of the whole number of the members of the House.

That is the statement of the Minister in charge of the Bill at that time. That was the intention put before the Parliament in 1973.

The Attorney said 'that was the intention'; he was not talking about the Bill. He further stated:

> That statement from the then Premier, Mr Dunstan, seems to be clear in evincing the intention of the Parliament about this matter.

Once again, the Attorney was talking about the intention.

The Hon. C.J. Sumner: That is what it is all about.

The Hon. R.I. LUCAS: With your new rules. Further, it was stated:

> I submit very strongly to the Council that that is a very significant factor to take into account when considering, as you are, Mr President, in this political context, what you do with section 26 (3). In doing what you have done, Mr President, you have ignored the statements and intentions outlined by Mr Dunstan in 1973.

The Attorney knew that he was on thin ice. He could not refer to what eventually passed; he was talking about statements and intentions.

The Hon. C.J. Sumner: There were three legal opinions tabled to back it up.

The Hon. R.I. LUCAS: The Attorney is very sensitive on this matter. It touches a very sensitive underbelly at present. There is no doubt that the prime reason for this particular Bill is to shaft the President. The Shadow Minister, the Hon. Trevor Griffin, interjected:

> They [the intentions] are irrelevant to statutory interpretation.

The Attorney-General went on:

> They are irrelevant in the sense that a court does not take into account under the current rules of statutory interpretation what is said in Parliament.

The Attorney-General knew very well that under the current rules of statutory interpretation as existed in April of this year the statements of former Premier Don Dunstan could not be taken into account. They were the Attorney-General's words in April this year. What do we have now, less than six months later, after the Attorney-General admits that he cannot take into account the contribution made by the Premier during that debate back in 1973? We now have his attempt to change the then current rules of statutory interpretation to new rules of statutory interpretation so that the statements of the then Premier, Mr Dunstan, made in 1973 can be utilised. As the shadow Attorney-General, the Hon. Trevor Griffin, pointed out—retrospectively. Therefore, when the Attorney-General, on behalf of the Government, wants to take on the President again, or wants to shaft him by making him a political neuter in this Chamber by removing his right to a vote, the Attorney will have under his arm, when he marches off to court, new rules of statutory interpretation so that when he wants to challenge the President's right to vote he will have changed the ground rules. That is a simple practice. If one is losing under the old rules, one changes the rules of the game so that when it comes around again one is in a far stronger position, in this case to knock off the President. I refer again to what the Attorney-General said on 12 April, as follows:

> They are irrelevant in the sense that a court does not take into account under the current rules of statutory interpretation what is said in Parliament. This is not a court—it is a Parliament.
>
> Surely it is possible—indeed sensible—for members of this Council and you, Mr President, in particular in determining what was intended by section 26 (3) to take into account the statements made and the intention of the Parliament at the time. It is not a court of law with which we are dealing here; this is the Parliament, and the Parliament is able to make up its mind on this point, taking into account the statements made in 1973 by the then Premier, Mr Dunstan. I have read that statement. That evinces the intention of the Parliament at the time.

The Hon. K.T. Griffin: That was Mr Dunstan's intention; he did not achieve it.

The Hon. C.J. SUMNER: It was not contradicted by anyone at that time. It was stated by the Premier at the time and he, after all, was the Premier of the Government that introduced the legislation.

The Hon. K.T. Griffin: That does not give him any special status.

The Hon. C.J. SUMNER: It does not give him any special status, except that in determining the intention of the Parliament I would have thought that it was very important to have a statement such as that from the Premier, the Leader of the Government that was responsible for introducing the legislation. That is the first point that needs to be made. On the political

point of what was the intention of the Parliament, I say to the Council and to you, Mr President, that that intention is made clear by the statement of Mr Dunstan in 1973.

I could go on reading from the Attorney's statement made on that day, but I need not. Quite simply, the Attorney-General was floundering on that occasion. All he could talk about was 'statements' and 'intentions'. He continually referred to the intention of the then Premier, Don Dunstan, in 1973. He conceded that under the current rules of statutory interpretation as existed in 1973 what he was saying was, in effect, not possible to back up, so wanting to shaft the President he now seeks to change the rules.

What happened subsequent to 12 April? In a question on 10 May the Leader of the Opposition (Hon. Martin Cameron) asked the Attorney-General a question along the lines of the Government's wanting to challenge this matter in the courts. The Attorney lost here and was talking about running off to the courts to have the matter decided. The Attorney-General said:

The Government is firm in its resolve to have this matter decided.

What happened on 15 May? A press report appeared in the *Advertiser* on that day 'Government won't take court action over Whyte', as follows:

The State Government will not proceed with legal action over the right of the President of the Legislative Council, Mr Whyte, to vote. The Attorney-General, Mr Sumner, said last night Cabinet had accepted a recommendation that no further action should be taken in the matter.

He went on to explain why no further action would be taken.

The Hon. C.J. Sumner: Explain it.

The Hon. R.I. LUCAS: The Attorney can explain it. He will have an opportunity to do so. There is a reason given here, but I do not believe that it is the only reason. The reason given to the press was that it was going to be hypothetical because of changes to the legislation—the matter had gone through the Parliament.

The Hon. C.J. Sumner: You are obviously not a lawyer.

The Hon. R.I. LUCAS: I am happy to concede that. That was the Attorney's reason, given to the *Advertiser*, but there is no doubt that that is not the full case.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: It is not the full case. The Attorney-General in April was all gung ho: 'We are going to the courts. We will fight this all the way.' That was his approach. Then, he backed right off, because he knew under the rules that existed with respect to statutory interpretation in April and May of this year he was not going to win his argument in the Supreme Court. He could not win it here in the Parliament, threatened to take the matter to the Supreme Court, and then had to back off, because he knew he would not win the fight under the rules of statutory interpretation that existed in April and May of this year.

Having lost on both accounts, what did the Attorney-General do? He scurried down his burrow, went back to Caucus and Cabinet and then attempted to change the rules of the game. That is why this Bill is in front of us tonight, because the Attorney-General not only lost here—and he knows it and is very sensitive about this particular matter—but he also threatened to take the matter to court and knew he would lose there, too. So, what does he do? He seeks to change the rules of the game. That is why this Bill is before us tonight.

I now turn my attention to the contribution by the Parliamentary Leader of the Australian Democrats (Hon. Mr Milne) this evening. I am sure that you, Mr President, as I, and I am sure most members, recall, that when there was a possibility of your right to a vote in this Chamber being threatened, one or both of the representatives of the Australian Democrats—and correct me if I am wrong, because I am not sure whether it was the Parliamentary Leader or the Deputy Leader (Hon. Mr Gilfillan), who is not here tonight—proclaimed loudly to the press—I think it was the Deputy Leader (Hon. Mr Gilfillan)—that the President had a right to a vote in this Chamber and if he did not they would seek to do something about it.

The Hon. K.L. Milne: What he said was that every member has a right to a vote.

The Hon. R.I. LUCAS: I am sure that the Parliamentary Leader of the Democrats would agree that the President is a member of this Chamber.

The Hon. K.L. Milne: That is right.

The Hon. R.I. LUCAS: Right, so what the Deputy Leader of the Australian Democrats was saying was that the President was entitled to a vote. I understand that the Leader of the Australian Democrats agrees that the President is entitled to a vote.

That is what they said in April and May this year. What is now going to happen? The Leader of the Democrats has indicated that he will support this provision in the Bill, and I am not sure of the position of the Deputy Leader of the Democrats on this matter. The Democrat support for this Bill will, in effect, deprive in future the right of the President to have a vote in this Chamber, whether this President or a future President. There is no doubt about that.

The Hon. Diana Laidlaw: It is a bit of a conflict then, isn't it?

The Hon. K.L. Milne: Why didn't your Party rectify the matter when you were in Government?

The Hon. R.I. LUCAS: We did not need to. We were quite confident and had no doubt that the President had a vote.

The Hon. K.L. Milne: People must have known that it was ambiguous: it is ridiculously ambiguous. You could have straightened it out then. You should have done so.

The Hon. R.I. LUCAS: This is the point: the Attorney-General admitted in April this year that under the existing rules of statutory interpretation the President had voted. The Attorney-General was talking of running to the courts and challenging it, but he backed right off. I read that statement: 'The Government backed off'—15 May. Under the existing rules of statutory interpretation the Attorney-General knows full well that he would not win an argument in the Supreme Court to deprive the President of a vote. What does he do? He is going to change the rules of the game. That is what he is doing and that is what the Hon. Mr Milne is supporting.

The Hon. K.L. Milne: You can't look at one case. What are they worrying about in Canberra?

The Hon. R.I. LUCAS: That matter has not been raised in Canberra. We had this only four or five months ago. Surely the Hon. Mr Milne can see that, having lost in Parliament, having threatened to take it to the court, and having to unceremoniously back off because he knew on the advice he had that under the existing rules of statutory interpretation he could not win the argument, the Attorney-General is now going to change the rules of statutory interpretation. By changing the rules, when next we have a situation where the President exercises his vote on a matter, the Attorney will then run off to the Supreme Court to test it because he will have new rules to go by. Under the old rules he knew he could not succeed, so he backed off.

On 15 May the Attorney indicated that Cabinet had decided that it had to back off. If the Democrats support him now he will have new rules and the Supreme Court will have to interpret the Constitution Act under the new rules. So, the Attorney will feel quite confident next time the President exercises a vote knocking something out. He will sit there quite smugly. We will not have any fuss in the Chamber and any running to the Democrats—if the

Democrats are still here—to try to get support for the Bill. The Attorney will know that he can run straight to the Supreme Court with the new rules of statutory interpretation and he will be straight there within a week seeking a ruling on the matter to bind not only the President of the day but every future President and deprive them of a vote on particular matters.

Let us make no bones about it. That is what the Democrats are supporting. They are not supporting clause 3 in the Bill. The major reason that the Attorney-General and the Government wants this matter passed—and the Attorney is very sensitive on the matter—is because they want to deprive the President of a vote, they want to shaft the President and make him a political neuter—that is the reason.

The Hon. Diana Laidlaw: And undermine this Council.

The Hon. R.I. LUCAS: And undermine this Council, as the Hon. Miss Laidlaw interjects, quite correctly. The Democrats quite rightly on a number of occasions have staunchly defended the role of this Chamber. Back in April and May they quite rightly defended the right of the President to vote in the Chamber. Now, because their Democrat colleagues or whatever in Canberra, or because the Government has put a persuasive case to them, without looking at this aspect, they have indicated their intention to support this matter.

As the Hon. Mr Milne well knows, it is the time of the final vote that counts and he is not bound by what he has already said. On mature reflection, on new evidence that the Opposition is presenting to him this evening he can reflect on the matter, perhaps have discussions with the Hon. Mr Gilfillan, his Deputy Leader, and then they can both understand what they are voting for on this matter.

The Hon. C.M. Hill: It wouldn't be the first time he has changed his mind.

The Hon. R.I. LUCAS: The Hon. Mr Hill says that it would not be the first time the Hon. Mr Milne has changed his vote. At this stage I am not criticising the Hon. Mr Milne; I am urging him to think about this matter and to debate it with his Deputy Leader. There is no need for us to finalise—

The Hon. Diana Laidlaw: You will have the Hon. Mr Bruce standing over you.

The Hon. R.I. LUCAS: The Government Whip has spent the last 20 minutes diverting the attention of the Leader of the Democrats. There is no need for this matter to be voted on finally this evening. We are going to sit tomorrow, and the legislative work load is not particularly onerous.

The Hon. C.M. Hill: There is tons of time.

The Hon. R.I. LUCAS: We have tons of time, as the Hon. Mr Hill says. I hope that the Hon. Mr Milne will reflect on what I have put to him this evening. They are genuine views and I think important views. These matters deserve the attention of the Leader of the Democrats. I repeat: the Leader of the Democrats has to realise what he is voting on in this matter. He is voting on shafting the President and depriving him of a vote in this Chamber on future matters when the Government wishes to challenge the right of the President to vote.

The Hon. DIANA LAIDLAW: I rise with some reservations because that act is quite a hard one to follow. I commend both my colleagues, the Hon. Mr Griffin and the Hon. Mr Lucas, for well reasoned, astute and, I thought, thorough contributions to the debate. I hope that the Hon. Mr Milne is prepared to be bold enough, as he has often suggested that he is a bold and intrepid character, to reconsider some of his views expressed earlier in the debate. New section 22 authorises a recourse to material that has not been voted on by the Parliament. I object to it for that reason. Some of the material that judges, lawyers and anyone else must resort to when looking at Acts of Parliament includes punctuation appearing in the text of the Act as printed by the Government Printer, marginal and other notes to the text of the Act as printed by the Government Printer, reports of debates and proceedings of Parliament, reports of Parliamentary Committees, law reform commissions and committees, boards or commissions of inquiry and other similar bodies, and treaties and international agreements.

The point there is that, despite the extent of the material which has been itemised and which we are now authorising others to take account of, it is important to note that that list is not exhaustive by any means. I want to address that point specifically because what we are doing essentially is opening up this whole area. We are creating an open slather, and I find it naive in the extreme that the Hon. Mr Milne has based his whole agreement to this Bill by remarking that it will concern judges alone. He has disappeared now, and I had quite a few comments that I wanted to address to him.

The Hon. C.J. Sumner: It's considered unparliamentary to make that sort of comment.

The Hon. DIANA LAIDLAW: You are changing all the rules of Parliament here, so I am just fitting into the code that you have established. Perhaps the Hon. Mr Milne has gone away to reconsider his position.

The CHAIRMAN: It may be unethical but certainly not unparliamentary to make such comments.

Members interjecting:

The Hon. DIANA LAIDLAW: I hope that the Hon. Mr Milne is reconsidering, whether it is in this Parliament or elsewhere. Certainly, it would be worth while for him to do so.

Members interjecting:

The CHAIRMAN: Order! We will hear the Hon. Miss Laidlaw.

The Hon. DIANA LAIDLAW: The Hon. Mr Milne concentrated his support for this measure simply by considering judges alone and I would say absolutely and firmly that it is not judges alone upon whom this Bill will have considerable impact. Also, judges have the support of a large judicial library and many officers to assist them. It is the judges who are really going to be in a much better position than many of the general public who will also have to take account of the situation that the Government and the Australian Democrats intend to create in this Bill.

As I did in the second reading debate, I would like to refer to the letter than I received from the Secretary-General of the Local Government Association, because it appears that the Attorney-General has not given this letter any consideration. I am sure that the Secretary-General and the Local Government Association will be disappointed to see that their views have not been taken into account, yet they are genuinely felt and strongly expressed views. The Secretary-General states:

> Regarding your request for comments on the effect of the Acts Interpretation Act Amendment Bill on local government, we will of course be subject to the same problems as will the general public.

I stress that point, because the Hon. Mr Milne has indicated that it will have an impact only on judges, and that is not correct. As the Secretary-General has stated, they will be subject to the same problems as will the public. The letter continues:

> I must admit that I see the Bill as creating a lawyer's paradise in terms of the uncertainty and litigation it will engender. You will be aware that the present rules of statutory interpretation are fairly strict, whereby an Act is construed on its plain meaning, and the average citizen should be able to know the laws of the State by reading the Act, safe in the knowledge that that which he is reading accurately reflects the legal position regarding any particular subject.

I stress the next sentence most strongly, and I ask my Leader to not interrupt and distract the Hon. Mr Milne, whom I want to hear this point, because the Secretary-General states:

> It is not the duty of the average citizen, the businessman, local council or their lawyers to ensure that what is written in a Statute is a correct transcription of Parliament's apparent intention. That duty rests with Parliament itself, together with the Parliamentary Draftsmen.

Although the letter continues in the same vein, I will not read it further because, as I said, I referred to it in my second reading speech. It is important to note that it is not the duty of the general public, the business man or business woman, of local government or their lawyers, or indeed anyone, to have to worry about whether what they are reading in an Act that has passed this Parliament is in fact the intention of Parliament. Beyond that point we are also making an expensive legal system as we have at present, certainly far more expensive and a much greater burden on the general public, businesses and the like. I will not say much more other than add that when the Attorney loudly endorsed with the comment 'Hear, hear!' the remarks of the Hon. Mr Griffin at the end of his contribution, those comments essentially were that it is our responsibility to make the Acts that we pass in this Parliament clearer in their meaning—

The Hon. C.J. Sumner: That is not what—

The Hon. DIANA LAIDLAW: I noted that at the time. I am sorry if I misinterpreted the situation, but I would have hoped that the Attorney would say 'Hear, hear!' to that situation. If that is not what the Attorney said, I do apologise. I assumed that it was. I believe strongly that it is Parliament alone that is accountable to the people and that we alone should be making the law; we should be making it clear for people to understand; and we should not be passing that burden or responsibility on to others in the community. To suggest that, because judges alone in the past have referred only on occasions to Parliamentary debates, that is going to be the situation again is naive.

If we authorise the use of this material in the future and just one lawyer refers to it in advising a client, we will find that all lawyers in future will have to resort to the reference to many additional sources of material other than what is in this Act, otherwise they would not be serving the interests of their clients, and that is what they are being paid for.

The Hon. C.J. SUMNER: I am a little disappointed with some of the contributions of honourable members. Whilst the Hon. Mr Griffin argued the matter generally in terms of principle, some of the other contributors did not address themselves to the issues involved in the Bill. The first thing that needs to be said which I want to emphasise and which seems to have been lost in the flurry of words is simply that the courts' job by which they use the aids of statutory interpretation which they now have and which are sanctioned by long usage in the courts, or the courts' role as far as Statutes and Acts of Parliament are concerned, is to attempt to evince the intention of Parliament. That is the fundamental principle about which we are talking.

We are not talking about the courts somehow or other putting forward propositions that are contrary to the intention of Parliament. The whole rationale of this legislation is that if you cannot and do not refer to extrinsic material to resolve an ambiguity, you are restricting the courts' basic role, which is to interpret the intention of Parliament and to interpret the Statute that gives effect to the intention of Parliament.

That is the basic role of the courts when there is a dispute about what an Act of Parliament says: it is to attempt to get to the intention of the Parliament. So, to say that this legislation somehow or other provides for the courts to override the Parliament and what the Parliamentarians—the supreme lawmaking body of the State—want to do is a completely misreading of the legislation. What the legislation is designed to do is to provide—

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: That is a gratuitous nonsense from the Hon. Mr Lucas. If he had even bothered to consider the matter in any serious manner—

The Hon. R.I. Lucas: We have considered it.

The Hon. C.J. SUMNER: There is little point in continuing what ought to be a sensible debate if the honourable member interjects in that way. The fact is—and neither the Hon. Mr Griffin nor any lawyer in Australia will argue with it—that the purpose of statutory interpretation is to try to get to what Parliament intended from the words of the Statute.

The Hon. K.T. Griffin: From the words of the Statute.

The Hon. C.J. SUMNER: Exactly, that is what the current law is. Rather than restricting that capacity of the courts, the Bill is designed to provide to the courts greater means, by the use of extrinsic material, to give effect to the intention of the Parliament, and that is the basic role of the courts in relation to statutory interpretation. The Bill, in fact, enhances the role of Parliament by ensuring in so far as we can that the courts are able to properly interpret the intention of the Parliament. That is the first point which needs to be made very strongly and which members opposite have apparently ignored. That is what statutory interpretation is all about.

Secondly, certain political comments have been made, in particular by the Hon. Mr Lucas. The Hon. Mr Griffin said that the Bill was ill conceived. All that I say to the honourable member is that Bills similar to this have been passed in the Victorian and in the Commonwealth Parliaments. This whole business of the purposive interpretation of Statutes was promoted in 1982 by Senator Durack, the then Commonwealth Attorney-General. The Legal and Constitutional Committee of the Victorian Parliament, to which the Hon. Lance Milne referred, and which reported in October 1983, included a former Liberal Attorney-General of Victoria, Mr Haddon Storey, Q.C., who is well known to the Hon. Mr Griffin and who is someone for whom I have some respect. He was on a committee that recommended that a Bill such as this be passed in the Victorian Parliament, and it was. So, if the attempt is to get down, as the Hon. Mr Lucas attempted to do, and try to muddy the waters by saying that somehow or other this is solely a political act on the part of the Government, that is wrong.

The Hon. K.T. Griffin: Will you use it that way?

The Hon. C.J. SUMNER: I am saying to honourable members, if they want to make that accusation, that in the Commonwealth Parliament similar legislature received the support of the Liberal Party both in the Senate and in the House of Representatives, including Senator Durack, who was the Liberal Attorney-General for some four or five years. It also received the support of the Victorian Parliament. The Legal and Constitutional Committee reported on the Interpretation Bill, which was introduced by the Labor Government into the Victorian Parliament. That committee, including Mr Haddon Storey, reported, and a clause similar to the one that we are now considering was passed in that Parliament.

I put that forward only to say that there was a very detailed consideration of this issue in the Victorian Parliament. There was significant consideration of it through the Commonwealth Parliament. Senator Durack organised a seminar on this topic, at which were judges, academics and people concerned with the question of statutory interpretation, and ultimately the Bill was accepted by Senator Durack. So, to say that it is ill conceived and that it seems to have some base political motive really flies in the face

of those facts. Those are the two preliminary points that I make.

The third point that I make is that much is being made of what the courts would refer to if this Bill was passed. It is clear—and it is a point that the Hon. Mr Milne made with considerable force—that the Bill is designed to clarify that extrinsic aids can be used. Extrinsic aids would be used in the case of ambiguity when a case gets before the court and there is a dispute about the meaning of words in a Statute. It is all very well for people to say that one should ensure that a Bill is drafted so that it never gets to that stage; that is a fine ideal. All that one can say is that in the past 500 years of legislation that has not occurred, and it is less likely to occur now, not as a reflection on Parliamentary Counsel or the Parliament itself, but because more complex issues are being dealt with by Parliament. Life has become more complex; therefore, to draft Statutes to cover every situation that may be foreseen is also very difficult. All that I am saying on that point is that over the past 500 years the meaning of Statutes passed by Parliament has been disputed.

The Hon. M.B. Cameron: And Parliament has fixed them, after they've been to the courts.

The Hon. C.J. SUMNER: Parliament may have fixed them, but surely in terms of justice to individuals in a particular case it is important that judges and the courts can try to use the best means possible to get to the intention of the Parliament. To say that the Bill will bog down the system and make it more expensive to the litigants is really an unjustified criticism. The Bill is designed to allow the courts in cases of ambiguity to consider the extrinsic material. That is perfectly sensible. I must confess that one of the things that, as a law student, I found a little bit odd to understand was that the general rule of statutory interpretation was that one could not take into account extrinsic aids and that one could rely only on the words of the Statute. That always seemed to be a little odd and out of touch with reality.

The Hon. K.T. Griffin: It's an essential ingredient of democracy. One doesn't vote on the second reading explanation; perhaps we'll have to, now.

The Hon. C.J. SUMNER: As I said before, the reference and recourse to Parliamentary debates would be done in a case of ambiguity. A lot of what honourable members are criticising appears already to be law. If one refers to international treaties, for instance, the ninth report of the South Australian Law Reform Committee, which was chaired by Mr Justice Zelling, as honourable members know, referred to the use of treaties. It made clear that already under the rules of statutory interpretation courts can refer to treaties that are mentioned in Acts of Parliament.

He asked why there should be a distinction between treaties mentioned in the Act of Parliament and other treaties. In that case, we are clarifying the law. It is also interesting to note comments with regard to the reports of committees. One can refer to the reports of committees before the enactment of legislation, and to *Statutory Interpretation in Australia,* by D.C. Pearce. At page 64, it is stated:

> One source that it is clear courts will be prepared to consult in an endeavour to ascertain the mischief with which an Act is concerned is reports of committees of inquiry, Law Reform Commissions and other similar bodies that have investigated the subject matter of the legislation.

It is probable, if the learned author is correct, that those matters can already be referred to. Regarding marginal notes, the author states that the general rule is that marginal notes are not to be read as part of the Act and therefore are not to be taken into account for the purpose of interpreting the Act. He cites cases, refers to other cases, and concludes:

> The view expressed by Lord Reid and by Street J. seems the better to follow:

Their view was that marginal notes could be referred to in certain circumstances to resolve ambiguity. It is stated:

> As is said, a side note is a poor guide to the scope of a section. Stephen J. characterised it as 'At most only a quite minor aid, a most unsure guide.' Nevertheless a poor guide may be better than no guide, and there seems no reason why the court should reject entirely assistance that may, albeit very rarely, be of use to it.

That is a matter of dispute. Some authors believe that marginal notes can be used and may be of some assistance, although probably not of a great deal of assistance. Others believe that marginal notes should be rejected. That is the problem that one faces when referring to *Hansard.* The Hon. Mr Lucas referred to statements that I made earlier this year about the general rules of statutory interpretation. Certainly, the traditional rule was that there ought not to be—

The Hon. R.I. Lucas: The current rule.

The Hon. C.J. SUMNER: Yes. The traditional rule was that there should not be reference to *Hansard.* That was probably something of an overstatement of the position.

The Hon. R.I. Lucas: That's what you said.

The Hon. C.J. SUMNER: I know; I am saying that it was an overstatement of the law, because some judges in fact refer to *Hansard.* That was certainly the traditional view. Some judges will not consider *Hansard* in any circumstances.

The Hon. R.I. Lucas: That was a prepared statement from you.

The Hon. C.J. SUMNER: I have said that it was an overstatement.

The Hon. R.I. Lucas: You've just proved the case.

The Hon. C.J. SUMNER: All I am saying is that—

The Hon. R.I. Lucas interjecting:

The CHAIRMAN: Order!

The Hon. C.J. SUMNER: The general view is that: that is right. The fact is that some judges refer to *Hansard* now. Surely when we have the position where some judges refer to *Hansard* and other judges do not it should be clarified so that at least the same rule applies to everyone. The Symposium on Statutory Interpretation was held on 5 February 1983 and organised by Senator Durack. Senator Evans, the Commonwealth Attorney-General, stated:

> It certainly is true that as far as the High Court is concerned there is no longer any rule of complete exclusion of reference to extrinsic materials including *Hansard* in the case of some of the justices. In the Federal Court it has been laid down in *TCN Channel 9 v Australian Mutual Provident Society* that the *Hansard* report of the second reading speeches of the relevant Ministers and the explanatory memoranda of the accompanying Bills can be looked at for the purpose of ascertaining the mischief that legislation is intended to deal with.

There is already some intrusion into the absolute rule that *Hansard* should not be considered when dealing with statutory interpretation. Senator Evans further stated:

> At the same time judicial approaches in this area differ considerably. Some judges refer to *Hansard* while others do not. Some judges believe that they are not free to look at extrinsic material under the present law, while others do not feel so constrained.

Surely that is an unsatisfactory situation, and surely it behoves the Parliament to clarify the law. Surely it ought to be clarified in favour of providing the courts with the power more properly to interpret the intention of the Parliament. I refer now to a case that occurred in South Australia in the 1970s, the *Commissioner for Prices and Consumer Affairs v Charles Moore,* reported in 14 ALR, at page 145. It was stated:

> The court was requested to look at the Parliamentary debates to assist it in determining the interpretation of reporting agency. The definition in the Act had been arrived at as a compromise between the two Houses. In announcing the agreed form the Attorney-General informed the House of Assembly that the effect of the compromise definition would be to exclude department stores from the Act. The majority of the court refused to look at

the debates and reached the conclusion that it was the intention of Parliament to include department stores within the definition. Murphy J., relying on United States authority, accepted the invitation to refer to the debates and concluded that the intention was that department stores were not within the definition.

Surely, where there is a situation like that, rather than the courts giving effect to the intention of Parliament, they are adopting in some circumstances literal interpretations that in fact negate and reject the intentions of Parliament. I would have thought that honourable members should be concerned about trying to provide as much assistance as possible to the courts to give effect to the intention of the Parliament. After all, as I began by saying, that is what the process of statutory interpretation is all about. I do not share the fears that members opposite have expressed about this Bill. I believe that perhaps in some respects it is a pity that it is being debated in what one might consider an atmosphere where honourable members believe that there is some ulterior motive. I can assure them that that is not the case.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: I do, and the honourable member can interject as much as he likes. The fact is that the Bill has been brought forward as a matter of principle based on research carried out in Victoria and by the Commonwealth Parliament. Generally, I believe that it is in accordance with what is happening in the courts in any event. I have already referred to the move towards the use of extrinsic material in respect of treaties, marginal notes, and *Hansard* on the part of some judges at least. This Bill clarifies the law and makes it the same in regard to the use that judges can make of extrinsic material.

I suggest that the Council should see this apart from the issues that the Hon. Mr Lucas has brought into the debate. The Hon. Mr Milne raised the point of judges going off and consulting *Hansard* or some extrinsic aids after arguments on a case are finished. That is no different from what now occurs, because a judge can leave the bench, do some research, find a reference to the law or an article that he thinks relevant. If he thinks it is completely pertinent to the argument, the judicial thing for the judge to then do is call the parties back and put to them the argument he has obtained or the authority he has got from the cases. The same would apply if what happened in this Parliament were in issue before the court, the judge would put that to counsel on both sides and get their views on it, so I do not see a problem in the one point that the Hon. Mr Milne feels there may be some difficulty with. I support this Bill because I believe it is a significant and important reform for the Parliament to enact. I add one other point in relation to the reference to the Law Reform Commission reports and the like to which I have already referred from the author Pearce where he says it is already clear that the courts can look at extrinsic material, particularly Law Reform Committee reports and other committee reports that led to the legislation being introduced. That is backed up by a judgment of Mr Justice Zelling in a case recently in the estate of Kelly, 1983 SASR, where His Honour said:

> It is now well established that, in order to ascertain the deficiency in the law which was sought to be remedied, one may have resort to reports of Law Reform Committees where the amendment of the law is consequent upon such a report.

I refer to the judgment of the High Court of Australia in *Barker v. the Queen*, in the judgment Mason J. at page 429 and the judgment of Murphy J. at page 431. In that case it was the report of the English Law Reform Commission that was referred to same effect as the judgment of the House of Lords in *Black Clawson International Ltd* and the judgment of the Court of Appeal of New Zealand in *Harding v. Coburn*. His Honour then goes on:

> I make reference to the 28th report of the Law Reform Committee with some diffidence as I wrote the report.

Nevertheless, the principle is there expounded by Mr Justice Zelling. So, with respect to Law Reform Commission reports and other reports about the legislation prior to introduction into the Parliament, with respect to marginal notes, treaties and *Hansard*, the movement has all been towards a more relaxed attitude on the part of the courts in this area. That is a fact of life. What this Bill does is clarify that situation. That is only just for the people who appear before the courts of this State.

The Hon. M.B. CAMERON: I did not join in this debate earlier, but feel that some points raised by the Attorney-General ought to be answered. At the beginning of his last contribution he used the words 'in a flurry of words', I think when he was talking about the Hon. Mr Lucas. The words 'forgive him for he knows not what he does' come to mind, because the flurry of words he has just had are nothing compared to what will occur if this Bill passes, because there will not be a thing said in this Council that we will not answer in case some judge uses the Parliamentary debates as a means of interpreting the law. Every single word spoken, every single marginal note, will be looked at. Every part of the debate will be answered.

The Attorney-General and I have been having correspondence about the length of *Hansard* on a particular matter, but let me tell him that the effect of this will far outweigh any savings that might occur if there was agreement reached on that matter about the printing of second reading speeches, because we will not let a thing go past from now on. The Bill will be one thing that is looked at, but we will also be worrying about every single word spoken in this Council and will be answering it. That will be from this day on—not from when the Bill is proclaimed. Everything that occurs and has occurred in the past will be taken into account. I hope members who support this Bill know what they are doing, because I can assure the Attorney-General that we will be very vigilant about everything that occurs in this Council—

The Hon. R.I. Lucas: There will be very long speeches.

The Hon. M.B. CAMERON: Long speeches—the Committee stages will be unbelievable. We will not let anything occur, even in the Committee stages, without very clearly putting our point of view and repeating it. Some repetition occurs already but that is nothing to what is coming, because we will all be trying to get in the last word in case a judge reads the last bit of a debate. The Attorney-General can laugh, but that will happen. That is my attitude to what is happening tonight. I will certainly be taking this attitude towards everything. What we are doing, in fact, is saying that Parliamentary Counsel cannot handle the situation. They are very good, I know, but if that is the case it may be that they are understaffed and that we had better look at that end of the problem—not the other end.

The Hon. Diana Laidlaw interjecting:

The Hon. M.B. CAMERON: That is right. What we are saying to the courts is, 'Make the judgment for us, because our votes in this Council mean nothing. What we are doing might not be good enough. Have a look at us.' What we should be doing is curing this matter at the end where it commences and then curing it at our stage—not having the Parliament put aside. That is how I see it. I do not care which Attorney-General did this federally or which Attorney-General did this in another State. This is South Australia. This is our Parliament and it may be that we are better than they are at the job. There certainly have not been enough examples given of ambiguous cases for me to pass

this Bill into law. Goodness gracious! Imagine having to amend every marginal note and arguing about the words in those marginal notes because they might just be interpreted the wrong way by a judge!

The Hon. R.I. Lucas interjecting:

The Hon. M.B. CAMERON: That is right. I may be overstating the case. I think that the Attorney-General is overstating the case. I think that we should all sit back for a while and think about what we are doing, because the end effect of this Bill might be much worse than we understand. We are not misreading this legislation. The Attorney-General has accused us of that, but we know what the whole thing is about.

The Hon. R.I. Lucas: We know that he is upset.

The Hon. M.B. CAMERON: I do not want to get into that argument. The argument is about what we are doing to the debate in this Parliament and what we are doing to the interpretation of material put before it. The very name on this 'extrinsic material' in itself says, 'To hell with the Act. We have this other stuff outside that we can use.' It is certainly going to muddy the waters. I give the Attorney-General and the Hon. Mr Milne fair warning that from now on every debate will be extended to the point where we think we have got our point of view absolutely clear on every single item.

I can tell honourable members that the judges who are foolish enough to refer to *Hansard*—and I guess many of them will—will get sick to death of doing so, because they will have an awful lot of reading to do, as will everybody in this place. Also, everybody putting down the words—

The Hon. R.I. Lucas: Poor old *Hansard.*

The Hon. M.B. CAMERON: Yes—and the poor old press are going to have to listen to repetition after repetition. I do not think that this will clarify the situation at all—it will do the opposite. Therefore, I ask that this matter be put aside for at least a day so that we can think about it, because we are really heading down a track where I see a lot of trouble. It may well be okay for some members who will not be here after the next election, but they will leave behind people who have to go through this process of making sure there is absolute clarity in what we say. I repeat, 'Forgive him' because I do not think the Attorney-General knows what he is doing to the Council.

The Hon. K.T. GRIFFIN: The Attorney-General has said that it is all a matter of discerning the intention of Parliament. He made the point that up to now the intention of Parliament has been discerned from the written word that has been debated and passed by a majority of members of both Houses of Parliament and transmitted to the Governor for Royal assent. It is the intention of Parliament—the majority of the elected representatives. It is not the intention of one member of the Parliament. It is not the intention of the Government as reported through a Minister to the Parliament. It is the view of a majority of the members of both Houses of Parliament. That is what the intention of Parliament is.

I want it firmly placed on the record that it is not what any one member says that determines the law of the State: it is the written word that has been approved by a majority of the elected representatives in both Houses of Parliament. I am staggered that the Attorney-General would seek to make anything else but that the law of the State—but he is. He has included in this Bill reference to a whole range of material that has never been before the Parliament, has never been voted on and has never been the subject of a majority vote of both Houses of Parliament. That is the matter of principle—and it is a matter of principle—that I believe we should adhere to, rather than to pass this clause.

The Attorney-General referred to the report of the Victorian Constitution and Legal Affairs Committee. He referred to Senator Durack's support of this sort of proposition and Mr Haddon Storey's support of it. They are entitled to a particular point of view and they may well have had particular problems that are certainly not relevant to South Australia. The fact is that at the time when the then Commonwealth Attorney-General was promoting this particular point of view I opposed it, and I opposed it strongly at the Standing Committee of Attorneys-General and in other forums. I continue to oppose it because it is not part of the democratic process.

The Attorney-General has also said that one of the reasons for having this is that it is now more difficult to cover all the possible situations to which legislation may ultimately apply. It may be, of course, that the legislation was never intended to apply to all circumstances, many of which may not even be within contemplation at the time that any Bill is introduced to the Parliament. It may be that the Government has only one objective in view in dealing with a particular loophole in the law, but couches its second reading explanation in such wide terms that it hopes will allow the legislation to be applied down the line to circumstances that have never been contemplated—an umbrella type provision.

If that is what is proposed, I think that it is bad legislation. A Government should be legislating to deal with known circumstances and known and expected difficulties—those that are identified—not those that might be somewhere hiding in the bush and may not even be contemplated or in our knowledge at the present time. That is another reason why I find the Attorney-General's response totally inadequate. He also mentioned the Law Reform Committee on treaties. Let me read the relevant paragraph in the Law Reform Committee's Report.

The Hon. Diana Laidlaw: The Victorian Parliament did not agree to put in treaties.

The Hon. K.T. GRIFFIN: That is interesting, because the Attorney-General has said that this legislation will reflect the legislation in the Commonwealth and Victoria. It would be interesting to know why relevant treaty and other international agreement is not included. Let us look at what the Law Reform Committee said. It did not say that it agreed with that provision, and it referred specifically to the English Law Reform Commission's Report and to a particular recommendation numbered paragraph 1 (1) *(c)*. The Law Reform Committee states:

> As far as 1 (1) *(c)*: 'relevant treaty or other international agreement' is concerned, it would appear that this is already admissible in Australia if it is referred to in the Act (see the decision of the High Court of Australia in *Burns Philp & Company Limited v. Nelson and Robertson* 1958 *A.L.R.* 334). We see no reason why if the international agreement has been entered into by Australia but has been implemented by Statute without the agreement being scheduled it should not be equally available for use. We do not agree that if Australia is not bound by it at that time that it should be material for the consideration of the courts and to that extent—

note this Mr Chairman—

> our views are more conservative than those set out in 1 (1) *(c)* of the Law Commission's recommendation.

What the Law Reform Committee is saying is that where in Australia in a Statute there is a reference to a particular treaty or other international agreement then the courts say that one can have regard to it. Surely that is logical. There is no problem with that, because it is referred to specifically in a Statute. So, if it is referred to specifically in a Statute, one has to have regard to it. The report continues:

> We see no reason why if the international agreement has been entered into by Australia but has been implemented by Statute without the agreement being scheduled it should not be equally available for use.

That is different from what the Attorney-General said: he said that the Law Reform Committee had recommended that, if there was an international agreement, why should it

not be available for consideration. He did not say in the context that a particular Statute had in fact implemented the relevant treaty or other international agreement. That is different from what is in the Bill. The Law Reform Committee continues:

> We do not agree that if Australia is not bound by it at that time that it should be material for the consideration of the courts—

that is, not bound by it in respect of the Statute which implemented it—

> and to that extent our views are more conservative than those set out in 1 (1) *(c)* of the Law Commission's recommendation.

So, the Attorney-General is not picking up the recommendation of the Law Reform Committee in inserting in the clause treaties and international agreements. At the second reading stage I referred to punctuation, side notes and the division of Statutes into parts. Let me place on record what the Law Reform Committee said. It stated:

> We have not dealt with such matters as punctuation, side notes, the division of a Statute into parts or the headings of various parts of a Statute, as these whilst necessary parts of statutory interpretation are rarely guides to the intention of Parliament as distinct from the grammatical construction of the Statute and accordingly we have not dealt with the English recommendation 1 (1) *(a)*.

Yet, in this clause we see that the courts can have regard to punctuation, marginal and other notes. To that extent also the provision does not reflect the recommendations of the Law Reform Committee.

What the Attorney has said in reply to the comments of other honourable members, and me has only reinforced my view that this provision is contrary to Parliamentary democracy and ought to be resisted with as much strength and vigour as we can muster.

The Hon. R.I. LUCAS: I would like to ask a question of the Attorney who, in his contribution, proclaimed that he did not have the intention in mind of depriving the President of a vote in this Chamber, the inference being that that was the farthest thing from his mind. Will the Attorney indicate whether, if he is successful in having this Bill passed, he would be confident that a ruling of the Supreme Court on the right of the President to vote would go the way he wanted it to go in April or May this year; that is, to deprive the President of the right to a vote?

The Hon. C.J. SUMNER: I am confident that that would be the decision of a court now.

The Hon. R.I. Lucas: You did not take it there.

The Hon. C.J. SUMNER: The honourable member has interjected again. He has a very limited knowledge of the law, which unfortunately he displays sometimes in this Chamber. In his eagerness to contribute to all and every debate, unfortunately, he sometimes displays some misunderstanding of the law. All I would say to the honourable member on that point in so far as it is relevant (I suspect it is irrelevant to the debate, but as the honourable member has sought to introduce it), is that on the interpretation of the Statute as it is now, we have provided opinions to the Council and to you, Mr Chairman, from three separate QCs.

The Hon. R.I. Lucas: They are disputed.

The Hon. C.J. SUMNER: They may be disputed but I am saying that there are at least three opinions of the view that the correct interpretation of the Statute is that the President does not have a deliberative vote on the second and third reading of Bills.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: I do not know; there may well be, but that is a matter for the court to determine. All this provision would enable a court to do, if it believed it was able to get any sense out of the Parliamentary debate, would be to refer to the Parliamentary debate. Obviously, this Bill is not going to be used in a situation where all the Parliamentary debate does is throw into further doubt what the Statute means. It is there to be used—

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: I do not know. That is a matter on which the honourable member can contribute as much as I can.

The Hon. R.I. Lucas: Your view is that it would not?

The Hon. C.J. SUMNER: That has always been my view, and I made it clear on that point: I merely brought in aid of the view that I put forward the opinions of three QCs and I referred also to a statement made by the Premier at the time that that section was inserted in the Constitution Act. I cannot do more than that. If honourable members want to argue the toss about it that is their prerogative. All I am saying is that as far as the Government and I are concerned that is the evidence we have produced to the Council.

What view a court would take on it is a matter for the court. Opposition members seem to have exaggerated the significance of this provision in terms of what a court would be required to do. Judges are not fools: they would be discriminating. If from some reading of Parliamentary debate they saw that it was just hours of political diatribe, they would not give attention to that. However, there are circumstances where Parliament has evinced an intention and the Statute is open to ambiguity. The courts can make a decision one way or the other because of that ambiguity. Now they bring in certain rules of statutory interpretation to try to resolve the ambiguity in the different opinions between those who adopt a literal view of statutory interpretation and those who adopt a more liberal and open view about how to get to the intention of Parliament.

The purpose of the Bill is to try to provide the courts with an additional aid to resolve ambiguity. If *Hansard* or the reference to the other extrinsic aid does not assist in resolving the ambiguity, obviously the courts will not go through a long and protracted search to try to divine the intention of Parliament from that very unclear Parliamentary debate. I referred the Committee earlier to a case where it appeared quite clear what was the intention of Parliament as agreed to following a conference of managers, put to the Chamber following that conference, and the court believed that the Statute did not say that. That was an ambiguity. They resolved it against the intention of Parliament.

The Hon. R.I. Lucas: In this case on the President's vote, you argue that the intention of Parliament was to deprive the President of his vote. You say that this Bill will assist that?

The Hon. C.J. SUMNER: To say that it deprives the President of a vote is not right: the President did not have a vote—he never had a vote.

The Hon. R.I. Lucas: He has exercised it.

The Hon. C.J. SUMNER: All I am saying is that the intention was established by Mr Dunstan in introducing the Bill. The traditional rule was that the President did not have a deliberative vote. That is the situation in the Westminster Parliament and the House of Representatives.

The Hon. R.I. Lucas: The Senate?

The Hon. C.J. SUMNER: It is not the position in the Senate because it represents the regions of the Federation, the States, and they were given equality. Until the Bill was introduced by Mr Dunstan the President in this Council did not have a deliberative vote. His not having a deliberative vote was the reason why the then Premier (Mr Dunstan) introduced a Bill in order to give him a deliberative vote on the second and third reading of constitutional Bills. He was foreseeing a situation where, for instance, there was an election at a time when the new system came into operation. At that time 11 members were elected at each election, and he foresaw a situation where, say, a particular Party got six

members at one election—a majority—and six members at the next election, but was unable to pass Bills requiring an absolute majority because, once a Party had provided the President who did not have a deliberative vote, that Party, although having won a majority on both occasions at two successive elections, still would not have the power to pass a constitutional Bill—

The Hon. R.I. Lucas: Bills.

The Hon. C.J. SUMNER: No, I said a Bill requiring an absolute majority. The position is crystal clear to anyone who wants to research it that, prior to that Bill's being introduced, the President did not have a deliberative vote in this Chamber. He has never had a deliberative vote in this Chamber, just as he has not in the House of Commons or the House of Representatives. The reason the Bill was introduced by Mr Dunstan at the time was to overcome the problem of the President's not having a deliberative vote and overcome it in respect of constitutional Bills where an absolute majority was required. Whether for political reasons or other reasons that I do not want to go into, I can tell the Hon. Mr Lucas that that is the situation.

I challenge him and anyone else to go and research it. If they come to a different point of view, having honestly attached their intellectual powers to that situation, I am prepared to listen to it. Had there been a deliberative vote available to the President in this Chamber there would have been no need for the legislation introduced by Mr Dunstan, but it was the very fact that the President did not have a deliberative vote in this Chamber prior to 1975 that made it necessary to introduce that Bill to overcome the problem of a Party's winning Government and a majority in this Council in two successive elections and still not being able to pass a constitutional Bill. They are the facts, palatable or unpalatable.

The Hon. R.I. Lucas: Are you saying that this Bill will fix things up for good, anyway?

The Hon. C.J. SUMNER: I am merely saying to the honourable member that it will not deprive the President of a vote.

The Hon. R.I. Lucas: You admit that there is a dispute at the moment?

The Hon. C.J. SUMNER: I admit that there is a dispute on the Statute. There is a preponderance of dispute, obviously, because honourable members opposite take a different point of view from us. I believe that the proper interpretation is the one that I have outlined. If one looks at that history, it is the only sensible one that one can come to with respect to all the parties concerned. Whether the court will see it that way, even on the Statute as drafted at the moment or with the extrinsic aids is a matter for the court to determine. I would not wish to prejudge that situation. The honourable member can make whatever comments he likes about the politics of the situation, but when this matter was put to me—and it is a matter that has been around since 1970—this question has been debated—

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: The honourable member may find it coincidental.

The Hon. K.T. Griffin: Nine years of Labor Government Len King did nothing about it. I certainly did not approve it.

The Hon. C.J. SUMNER: No, the honourable member did not approve it; that is right, but he did not get around to approving much at all. All I say is that when this proposition was put to me, taking into account the original report of the South Australian Law Reform Committee of 1970, backed up by a very comprehensive report of the Victorian Parliament, backed up further by the Commonwealth Parliament and by the support of the former Liberal Attorneys-General in both the Victorian and Commonwealth Parliaments, I thought that it was a reform the time for which had come and, frankly, that it would not raise any hackles in the Parliament.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: I did not. Frankly, I can assure the honourable member that I did not have in mind the question of the President's vote. That issue first came to my mind when I noticed that honourable members opposite were so agitated about it. Then it finally seeped through to me that that is what they were concerned about. That is fine; they can be political about it if they want to be.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: It was not any other basis put by the Hon. Mr Lucas. His was a simple political statement that it was designed to shaft the President. I utterly reject that; it is not the situation. As I said, it is put forward as a Bill that I believe deserves the support of the Parliament. It has received the support of both the Victorian and the Commonwealth Parliaments, backed, as I said, by well respected Liberal Attorneys. That really disposes of the argument that somehow or other it is a purely political exercise.

The Hon. R.I. LUCAS: After that, there is no doubt that we have before us a latter day Parliamentary Brutus waiting to plunge the dagger into the back of the President of the day or of the future. A simple question was put to the Attorney-General, but he wavered all over the place without giving a reply at all to the question.

The Hon. C.J. Sumner: I answered the question.

The Hon. R.I. LUCAS: The Attorney did not answer the question. Simply, the question put to him was that, given that there was a dispute about the situation with respect to the President's vote at the moment—and the Attorney at least conceded that, although he argued that the overwhelming weight of evidence was behind his view—will not this matter in effect tie up all the loose ends for the Attorney-General's point of view on this matter? I was not entering the whole range of other debates about Charles Moore or whatever else the Attorney can well argue with the shadow Attorney. They are well versed in the law and can argue that matter. The simple point that I am making is that there is a base political reason for this piece of legislation.

For the Attorney to stand up and proclaim innocence to all the world, that he never even thought of the matter until the Bill had been introduced into the Parliament, is absolute hogwash. For the Attorney to expect members of this Chamber to accept that he never saw the possible use of this legislation on a matter that was raised only four or five months ago is absolute hogwash. He says that his file has been going since 1970. There are nine years of Labor Government, and 1½ years of Labor Government in this term, and then four or five months after there is a dispute in the Council about the right of the President to vote all of a sudden up pops this little Bill: for the Attorney to expect us to believe that he never even thought about the possibility of the use of this Bill with respect to that controversy back in April or May of this year is, as I said, hogwash.

Clearly, the Attorney will not respond to that genuine question that I put to him regarding the use of these new rules of statutory interpretation with respect to the right of the President to vote. I really want to raise only one other question with respect to some comments that have been made representing the Law Society (I think that it was the President of the Law Society, although I may stand corrected on that), in relation to the possible effect on legal costs. Can the Attorney indicate to the Committee whether he would agree that the results of the passage of this legislation will mean that for all of us who need legal counsel on occasions the time, and therefore the cost, involved will be increased, or whether he would alternatively give an under-

taking that he believes that the representative of the Law Society was in effect incorrect?

The Hon. Diana Laidlaw: That is certainly the view of the Local Government Association.

The Hon. R.I. LUCAS: The Hon. Miss Laidlaw interjects that it was the view of the Local Government Association as well. I would be interested in the Attorney's views as to whether he believes that it will increase the costs for all and sundry or whether he is prepared to say, 'No, it will not increase the costs.'

The Hon. C.J. SUMNER: The honourable member seems to delight, for some reason, in being gratuitously insulting about a whole range of matters. That seems to be his style in this Parliament. I suppose that if that is the style that he wants to be known for, so be it. It may advance his political career, but I do not know; it is certainly not a matter for me to determine whether that will impress his colleagues or not. Thankfully, I do not have to make any decision about that, but it seems to me that his style has been one, without necessarily addressing arguments, to be gratuitously insulting to anyone who happens to disagree with him.

As I said, that is his style. It may see him one day in a position of power in the Parliament. It may be that his colleagues will see that that is not a particularly desirable style.

I can only repeat that I have answered the honourable member's question. Clearly, if the Bill is passed the courts will be able to take into account the Parliamentary debates in relation to the matter that was of concern to this Parliament some months ago, that is, the President's vote. I answered that question.

The Hon. R.I. Lucas: That wasn't my question.

The Hon. C.J. SUMNER: Beyond that, I have said that it would be a matter for the courts. I cannot say that they would necessarily come to any particular opinion.

The Hon. R.I. Lucas: But you have views.

The Hon. C.J. SUMNER: Yes, my view is that they would, but that has always been my view.

The Hon. R.I. Lucas: That's what I asked.

The Hon. C.J. SUMNER: That is what I said in my previous response. I said that that was my view, irrespective of whether or not the *Hansard* debates were introduced to the courts. I said it was my view on the interpretation of Statutes, backed by three legal opinions. I say now that the introduction of *Hansard* will make the matter clearer. The honourable member has decided to be insulting, as I have said, and to import certain political motives into this matter. I reject that. The matter was brought forward as a genuine law reform proposal based on South Australian Law Reform Committee reports and what has happened in two other Parliaments. An argument may be put that there will be increased costs. I believe that the Victorian committee addressed the matter and stated:

> Costs may be added by the use of extrinsic aids. However, the opposing view that costs may be lessened is equally valid, or more so. Resort to extrinsic aids may shortcircuit the process, saving courts from having to grope about in the darkness, as one member of the English House of Lords has said. Indeed, justice demands that where a right answer is possible through resort to extrinsic materials, this is preferable to a wrong answer where materials are ignored.

I dispute the proposition put forward, apparently by the Law Society and the Local Government Association. While it is not possible to answer categorically, I can say that there may be some cases where this action would increase costs but, as has been pointed out, there may be other cases where it will shortcircuit a lengthy argument about what a Statute means. In fact, that is likely to occur on as many occasions as occasions on which additional argument provoked by the use of aids are likely to occur. If there are arguments on statutory interpretation in relation to which it is necessary to go back, as occasionally it is necessary, through the Statutes and the predecessors to a particular Statute, there can be incredibly lengthy argument, whereas a simple reference to extrinsic aids or to the Parliament can resolve the matter.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: All I say in regard to the case to which I referred in the South Australian High Court involving Charles Moore is that the matter would have been resolved quickly had there been reference to extrinsic aids. I do not believe that overall what has been said by the Local Government Association or the Law Society is correct. It may be correct in one particular case, but on the other hand the use of extrinsic aids may very well shortcircuit arguments.

The Committee divided on the amendment:

Ayes (6)—The Hons M.B. Cameron, L.H. Davis, K.T. Griffin (teller), C.M. Hill, Diana Laidlaw, and R.I. Lucas.

Noes (7)—The Hons G.L. Bruce, B.A. Chatterton, J.R. Cornwall, M.S. Feleppa, K.L. Milne, C.J. Sumner (teller), and Barbara Wiese.

Pairs—Ayes—The Hons J.C. Burdett, R.C. DeGaris, Peter Dunn, and R.J. Ritson. Noes—The Hons Frank Blevins, C.W. Creedon, I. Gilfillan, and Anne Levy.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clause 4 passed.

Title passed.

Bill reported without amendment. Committee's report adopted.

ESTIMATES COMMITTEES

The House of Assembly requested that the Legislative Council give permission to the Attorney-General, the Minister of Health and the Minister of Agriculture, members of the Legislative Council, to attend and give evidence before the Estimates Committees of the House of Assembly on the Appropriation Bill (No. 2).

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

That the Attorney-General, the Minister of Health and the Minister of Agriculture have leave to attend and give evidence before the Estimates Committees of the House of Assembly on the Appropriation Bill (No. 2), if they think fit.

Motion carried.

ADJOURNMENT

At 10.17 p.m. the Council adjourned until Thursday 20 September at 2.15 p.m.