## LEGISLATIVE COUNCIL

Wednesday 26 November 1986

**The PRESIDENT (Hon. Anne Levy)** took the Chair at 12 noon.

The Clerk (Mr C.H. Mertin) read prayers.

## QUESTIONS

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

That Standing Orders be so far suspended as to enable questions to be postponed to a later time of the day and to be taken on motion.

Motion carried.

## LEAVE OF ABSENCE: Hon. B.A. CHATTERTON

**The Hon. G.L. BRUCE:** I move:

That one month's leave of absence be granted to Hon. B.A. Chatterton on account of absence overseas.

Motion carried.

## THE STAGE COMPANY

**The Hon. L.H. DAVIS:** I move:

That this Council condemns the State Government for its hasty, illogical and unjustified decision made without proper consultation to withdraw funding at the end of 1986 for the Stage Company, which deservedly has gained a reputation in South Australia, interstate and overseas as one of Australia's leading theatre companies in the staging of Australian plays, and calls upon the State Government to review this decision as a matter of urgency.

Madam President, let me first set the scene of this drama played out in Adelaide, city of a million people, alleged capital of the arts in the continent of Australia. Adelaide boasts a world acclaimed Festival of the Arts, an equally acclaimed biennial Come Out Festival for children and, rightly or wrongly, dubbed the 'Athens of the South' is seen as a city not too big or too small but just right for performing artists wishing to practise their profession with bipartisan support at the political level and enthusiasm at the community level.

It is also said that the arts in South Australia receive more State Government funding *per capita* than any State in Australia. We will not dwell on that point today but leave it aside for another time. The 1986-87 State budget, presented just three months ago, detailed State Government grants for the arts.

This motion is about a theatre company—the Stage Company—and the State Government allocated $317 000 to the Stage Company for the 1986-87 year. It also allocated $1.529 million to the State Theatre Company of South Australia and $188 000 to the community theatre group, Troupe. Those are the program notes. Let us move into Act 1 of this fruity melodrama which has, as its plot, the attempted assassination of the Stage Company and several villains who will be exposed as the plot thickens.

Act 1.

The Stage Company, established in 1977, is in its ninth year, and looking forward to its tenth anniversary in 1987. The Stage Company in its nine years has produced over 60 plays, most of them Australian, many South Australian, and many have been world premieres. Four David Williamson plays have been presented, including *The Perfectionist*, and late last year the widely acclaimed *Sons of Cain. Errol Flynn's Great Big Adventure Book for Boys* toured Edinburgh and won a fringe award. South Australian playwright, Rob George's delightful *Percy and Rose, Down an Alley filled with Cats* (an ironic title in view of what happens in Act II) and *Masterclass*, the 1984 Festival production, are just a few of the excellent contributions from the Stage Company in recent years.

The Stage Company has been proudly South Australian, but arguably there has been no other theatre company in Australia which has encouraged Australian playwrights more. In fact, as the President would well know, there is only one other theatre company in Australia that promotes Australian plays to the same extent as the Stage Company, and that is the Griffin Theatre Company in Sydney. The Stage Company has been unashamed in its production and promotion of Australian plays. In fact, it could be said to have been backing the 'Buy Australian' campaign long before Prime Minister Hawke and Premier Bannon climbed on the bandwagon. A grim irony of that is that, at a time when Prime Minister Hawke and Premier Bannon are saying that we must buy Australian, they are attempting to assassinate something which has had as its very reason for existence the backing of Australian plays, not just for one year but for nine years. In South Australia's Jubilee year, the Stage Company embarked on an ambitious program. It staged *Masterclass* in the Victorian Arts Centre to widespread acclaim. Artistic Director John Noble took *Sons of Cain*, staged in Adelaide in late 1985, to London for a six week season. In the opening weeks of that season in London he had to contend with the bombing of Libya and the Chernobyl accident, but finally the crowds came. The six week season extended to 10 weeks. When I was in London in mid-June, talk around the competitive—

**The Hon. J.R. Cornwall:** The people at Jabiru are really excited about that. They are far more concerned about bread on the table.

**The Hon. L.H. DAVIS:** There is a comment from the Minister. Let us talk about Government waste—and the Health Commission could come under the spotlight in that regard. When I was in London in mid-June, talk about the competitive West End theatre circuit was that *Sons of Cain* was one of the few plays on the 'must see' list. Even the philistine Minister of Health, the Hon. John Cornwall, would have enjoyed that production. The Stage Company went to San Antonio, in Texas, for a one week season with the support of the Jubilee 150 Board. With Texas and South Australia both celebrating their 150th birthday in 1986, it was highly appropriate for the Stage Company, the 'Buy Australian', 'Produce Australian' theatre company, to promote Australia in Texas through Miles Franklin's play, *The Rainbow's End.*

In the 1986-87 financial year the Stage Company has staged three plays, and they came in on budget. On Saturday week, 6 December, the Steve Spears musical, *Those Dear Departed*, will premiere at the Space Theatre. Again, that is an ironic title—*Those Dear Departed*—because, unless the Government reverses its decision, the Stage Company will depart the scene in South Australia. In the 1986 calendar year, the Stage Company has mounted no fewer than nine productions, with successes in London's West End, in Texas and in Melbourne. South Australian audiences have not been neglected because there have been six productions in the Festival Centre's Space Theatre. That is a formidable schedule in anyone's language.

The Stage Company achieves this with a very small—and I suspect grossly underpaid but nevertheless dedicated—staff. There is no fat in the Stage Company's administrative budget. A waste watch committee could not go into the Stage Company, as it can do so easily in the Education

Department, the Department of Housing and Construction and the Health Commission, and see gross examples of waste. The recognition of the Stage Company as an entity is also extended to its Artistic Director, John Noble. John Noble, who is held in high regard by all people who know him and his productions over many years, represented Australia at the New Zealand Playwrights Conference in September this year. So, act 1 sets the scene: no intrigue but plenty of good drama by Australian playwrights staged in three continents by South Australia's own Stage Company.

Act 2 sees the curtain rise with the Stage Company having just received $317 000 from the State Government for the 1986-87 year. Of course, that is recorded in black and white in the State budget at the end of August 1986—just less than three months ago. Two weeks later, in the second week of September, representatives of the Stage Company met with the Director of the Australian Council Theatre Board and an accountant from the Australia Council. Mr Chris Winzar, the Director of Arts Development and No. 2 in the State Government's Department of the Arts, was also present at these meetings. The artistic program for the year was discussed along with the financial progress of the company.

I am told that Mr Winzar was critical not only of the Stage Company's finances but also of the lack of an artistic policy. The Stage Company had finished the 1985-86 year with a budget deficit of between $30 000 and $40 000. It had taken steps to work off that deficit in the current 1986-87 financial year. The Stage Company had retained an accountant as a consultant to ensure that its finances were properly monitored. In fact, its presentation to the Australia Council representatives at that meeting in Adelaide was so impressive that the accountant from the Australia Council later telephoned it to congratulate it on its financial presentation.

Just one week later, in the third week of September, the Australia Council Theatre Board met in Sydney to consider funding for theatre companies from all around Australia. Not surprisingly, not all the information that was discussed at that meeting has become publicly available. However, what is clear, and what has been confirmed by me from three sources now, is that Mr Chris Winzar (from the Department of the Arts) was present for the discussion of theatre companies in South Australia and that he was asked whether he believed the Stage Company was financially viable. His explicit and blunt answer to that question was 'No'.

The Australia Council declined to fund the Stage Company and, as a result, the Stage Company lost $60 000 from the Australia Council for 1986-87. One would imagine that there are two prime criteria that the Australia Council uses in allocating grants. One would be on artistic excellence and relevance of the theatre company productions and, secondly, financial viability. It is hard to imagine the Australia Council Theatre Board knocking back the Stage Company's application for funding on the basis that it lacked artistic excellence and relevance in its program. Financial viability must have been the reason that was used by the Australia Council in knocking back the Stage Company. In fact, that has been confirmed. That has been about the only thing that I have been able to confirm in this dark and secret mess that has emerged over the past few weeks. The Stage Company did get confirmation from the Australia Council that its application for funds had been rejected on the basis of financial viability.

The State Government, having been briefed in advance that the Stage Company was confident that it would work off the relatively small deficit in the 12 months of 1986-87 and finish the financial year with a nil deficit, was going to the Australia Council and saying that it did not believe that it was financially viable. No question exists that Theatre Board representatives who gather around Australia and do not have an intimate knowledge of the Stage Company will take a great deal of note of what the Government representative says about such a company and its financial prospects. Yet, the Stage Company has a strong board with legal, financial and public relations representatives. It has consistently maintained to the State Government, the Premier, the Department of the Arts and anyone else who wanted to know that the company could finish 1986-87 with a nil deficit.

It is interesting to note that, although the Stage Company lost its Australia Council funding, the State Theatre Company and the Troupe Theatre continued to receive funding from the Australia Council, I am in no way reflecting on those two companies, but it is worth bearing in mind that, if financial deficits are the criteria for pulling plugs on theatre companies and other arts bodies around Australia, a lot of plugs will be pulled in the next few days.

Several respected sources tell me that the Stage Company has not been one of the Theatre Board's favourite sons for some years. I have heard from a number of sources that the Australia Council has had it in for the Stage Company. It does not like it. I will not speculate on the reasons why, but the fact is that the Stage Company does not receive the same financial favours that other companies have received.

The financial information given to the Australia Council was also made available to the Premier as Minister for the Arts. On 14 October the Premier saw Stage Company representatives and told them that he had been advised by the Arts Finance Advisory Committee to pull the plug on the Stage Company and close it down as it lacked financial viability. That came as somewhat of a surprise to the Stage Company.

The Arts Finance Advisory Committee consists of only three people. The Chairman is Mr Rob Wallbridge, a public accountant. Another member is a Treasury representative but, interestingly, the third member is the same Mr Chris Winzar—No. 2 in the Department for the Arts. He was also the person involved in discussions with the Australia Council and the person who, according to three sources, told the Australia Council that the Stage Company in his view (perhaps it was the view of his department or that of the State Government) lacked financial viability.

It was the Premier who said, 'Well, the Arts Finance Advisory Committee has said that you can't make it financially and we are going to pull the plug, but I am going to check that out again.' Give the Premier his due—at least he said, 'I am going to check it out again and no doubt you would like the opportunity to discuss this matter further before a final decision is made.' That was 14 October. A month later the Stage Company was again summoned to appear before the Premier—18 November was the magic day. In the meantime there had been no consultation whatsoever, so they presumed that this next meeting was going to be a meeting for further consultation, as had been promised.

However, what happened was that they were told that their funding—which you will remember had been granted at the end of August, less than three months earlier—was going to be withdrawn as from the end of December 1986. There had been no consultation whatsoever, as promised by the Premier of South Australia and the Minister for the Arts; there had been no consultation with this respected theatre company, as had been promised and as one would have expected, which was the very least the Stage Company

deserved after nine years of distinction, treading the boards in South Australia, interstate and overseas.

The Stage Company was never given an opportunity to put its side of the story. The theatre is all about plays but there was certainly no fair play on this occasion. The company had been publicly executed without a trial just two weeks ahead of the scheduled opening of yet another Australian play by distinguished playwright Steve Spears.

Act 3 is yet to be written but we can already see some of the consequences of this illogical, hasty, ill conceived and totally unjustified decision. Let us just look at the economics of it for a start. Thirteen to 16 weeks in the Space Theatre will now be vacant next year; that would net the Festival Theatre $40 000 in revenue. That revenue will be lost and will have to be replaced, if it can be replaced. The actors and actresses and the many supporting staff who go to make up the Stage Company when it is in production—employing 20 people for *Those Dear Departed*, which is shortly to commence a season—will drift inevitably to those larger population centres in the East (Sydney and Melbourne) looking for jobs. Those employees have mouths to feed and they have to follow their profession. There will be a vacuum created by the demise of the Stage Company.

The spotlight has inevitably been on the Stage Company as it struggles to keep its doors open with a knife in its back but I would submit that the spotlight should be directed towards the perpetrators of this foul act. I have come to the view that this was a planned assassination, and it is a view given some credence by the Minister Assisting the Minister for the Arts. Just remember the first act and the second act.

**The Hon. C.M. Hill:** Is she going on Saturday week?

**The Hon. L.H. DAVIS:** We will talk about that in a moment. You will remember, Madam President, that last week, in raising this serious matter in Question Time, I suggested that many people had argued that the State Government went to the Australia Council suggesting that the Stage Company lacked financial viability, as a result of which the Australia Council pulled the plug by taking $60 000 away from the Stage Company. Then the State Government turned around and used this as the reason for withdrawing its support.

**The Hon. R.J. Ritson:** A self-fulfilling prophecy.

**The Hon. L.H. DAVIS:** A 'self-fulfilling prophecy', as my colleague the Hon. Bob Ritson rightly interjects. Of course, a lovely double play, a lovely plot for a piece of theatre which would perhaps attract even the Hon. John Cornwall. Of course, the Hon. Barbara Wiese, who is rather naive on some occasions, fell in totally, because she said in response to me:

> Based on that decision—

that is, the decision of the Theatre Board of the Australia Council to withdraw financial support from the Stage Company—

> the State Government has now decided that it would be irresponsible to continue funding to the Stage Theatre Company beyond the end of this year.

That is the end of 1986. She admitted that: the fact that the Australia Council withdrew support of $60 000 was the reason which enabled the State Government to pull the plug. There you have it in black and white—in *Hansard*—for the world to see. And it affects not only the theatre community of South Australia but also, I submit, the community of South Australia at large, because the arts, I hope, mean something more than just jobs for artists. They mean pleasure and enjoyment for the community at large. Increasingly, the arts are seen overseas—in America, in England and, indeed, in Australia, also—as one of the quickest growing areas of opportunity for jobs. There is no doubt about that at all. As I said, there is also no doubt that this was a planned assassination. There is blood on the hands of the principal players—and that includes the Premier and Minister for the Arts—

*Members interjecting:*

**The Hon. L.H. DAVIS:** —and key officers in the Department of the Arts. The Hon. Dr Cornwall finds this pretty flippant and frivolous. I would have thought he has enough problems of his own in the Health Commission—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. L.H. DAVIS:** —dealing with a crumbling bureaucracy and more leaks than he can cope with. He should not try to put his fingers into the dam of the arts. I suggest that he keep his fingers in the holes in the Health Commission.

**The Hon. J.R. Cornwall:** You've been inhaling too much paint.

**The Hon. L.H. DAVIS:** At least I am painting a scene about the Stage Company which you will find hard to deny. I am not alone in the view that this is a planned assassination of the Stage Company. I have been shadow Minister for the Arts since late January of this year, and the Hon. Murray Hill was, of course, the Minister for the Arts and the shadow Minister for the Arts for many years before that. He earned great respect, not only in the performing arts and visual arts but throughout the arts community for the work that he did.

I am pleased to say that when I came into this job—with the Hon. Murray Hill's full support—I was pleased to see that the arts in South Australia regarded the Government and the Opposition as being committed to the arts. There was a recognition of a bipartisan approach and, in fact, in my initial discussions with key people in the arts community I pledged to maintain that bipartisan support. But I have come to the sad conclusion, not only because of the instance of the Stage Company which I have mentioned today in some detail but also through other matters which have come to my attention—that all is not well in the arts in South Australia.

One can reflect on the sad situation of the Australian Dance Theatre, which had the guts ripped out of it when Jonathon Taylor left in what can only be described as a fairly unusual fashion. We see Troupe Theatre, which, of course, was one of the recipients of Australia Council funds, in a severe deficit situation of some $25 000, with a play which is struggling at the moment. Quite clearly, all is not well in the administration of the State Opera. Public libraries, which have not usually been a burning issue in the community and in the Parliament, have this year raised their head as having a serious and critical funding problem. We have a Minister who tries to 'heavy' them into altering their annual report—an independent statutory authority being pressured to alter its annual report.

As I have said, the Stage Company has been asked to close its doors in just 35 days, and that hasty decision made by the Government and Department for the Arts reflects quite clearly that the Minister for the Arts (Mr Bannon) is not on top of his portfolio. The arts portfolio should not be seen as being a soft and cushy one. As I mentioned, the international experience is quite clearly that employment growth in the arts is rapid and there are very strong links—which we should be trying to forge in South Australia—between tourism, heritage and the arts. The Minister Assisting the Minister for the Arts (Hon. Barbara Wiese) is rarely seen at arts functions, and, in fact, one can only reflect on

what Peter Ward said in a very incisive little piece published in the *Adelaide Review* of April 1986.

**The Hon. R.I. Lucas:** He was a former Labor Party press secretary, wasn't he?

**The Hon. L.H. DAVIS:** Peter Ward is usually quite well informed on these matters, I quote from his article:

> Ms Wiese is a bit of a conundrum as a Minister. Is she more than just a pretty face? Is that a sexist thing to say? No. When she beat Anne Levy in the Labor Caucus ballot for her ministerial position members of the left faction, to which Anne Levy belongs, said, wryly, that the Premier had favoured the candidate who would look best in the centrefold of an election pamphlet. At that time it was widely predicted that so careful would she be protecting her ministerial image that she'd probably restrict herself to only one or two non-controversial decisions a year.

I do not seek to embarrass the President, but people in the arts circle in South Australia with whom I mix I think would rather like to have seen the President as Minister for the Arts. Certainly, I quite often see the Hon. Ms Levy, in her own right and sometimes perhaps as President of the Legislative Council, at arts functions. She is often opening—

**The Hon. C.M. Hill:** She has always taken a very big interest.

**The Hon. L.H. DAVIS:** She has consistently taken an interest in the arts, and it was just the heavy politics of the Labor Party that saw her denied that opportunity. I think she rightly deserved to be Minister for the Arts. I would submit that South Australia is suffering because of that fact today. I suspect that this decision in relation to the Stage Company would not have been taken if the Minister for the Arts had been on top of his portfolio. It goes far beyond what South Australians think about the Stage Company. David Williamson, that revered Australian playwright, has telegrammed the Premier expressing his concern. I know that he has telegrammed the Stage Company. Also, the President of the Writers' Guild has telegrammed the Premier expressing concern. Steve Spears wrote a letter to the *Advertiser* which was published only last Saturday, and I quote that letter as follows:

> A few quotes from 1986 about the Stage Company: 'The Stage Company's production of *Masterclass* is an excellent piece of theatre, confidently directed and cleverly acted.' (*The Age*, Melbourne.)
>
> 'The artistic rewards of this Australian company's production of *Miles Franklin* and the *Rainbow's End* are plentiful and rich.' (*San Antonio Light*, Texas.)
>
> '*Sons of Cain* is an all-Australian event. This is the first such exchange between the Elizabethan Theatre Trust and the Theatre of Comedy and it marks a notable triumph for the commercial theatre.' (*The Times*, London.)
>
> (Re the Stage Company's South Australian production of *The Humble Doctor*) 'John Noble's now well-honed skills as a director deliver this play and performances with seemingly easy professionalism. Well worth seeing.' (*The Advertiser*, Adelaide.)
>
> I can think of no company in Australia and few in the world which could boast such a record. Two international triumphs, an interstate tour and six local productions in one year on a budget that would barely cover the Sydney Theatre Company's set design costs. It's a magnificent achievement. So naturally, the State Government is going to close the company down in 1987. Dear, oh, dear.
>
> STEVE J. SPEARS
>
> Elizabeth Bay, New South Wales.

So, there we have it: a sad and sorry story. A story which I believe has only just started. The battle for the Stage Company is not yet over. As coincidence would have it, the Friends of the Stage Company had organised, some weeks ahead of this unexpected decision to pull out the plug, a lunch at the Bridgewater Mill last Sunday. John Klunder, the member for Newland who is not often seen—in fact I have never seen him—at an arts function, was the hapless loser in the Labor Party. He drew the short straw to attend the Stage Company luncheon. He, of course, was about as popular as a pork chop in a synagogue. He had his head in the soup for the first 20 minutes and he left early before the heavy politics began. The fact is there were 140 people to listen to Len Evans, that notable Australian wine connoisseur and promoter, talk about frothy matters before they got down to the serious business of discussing the future of the Stage Company.

The Government should take it on notice that the friends of the Stage Company and all those people in South Australia who love theatre will fight back very strongly. They will not accept this decision lying down. I want to say, as shadow Minister for the Arts, that the Government should be on notice that in future it will not be allowed to get away with decisions like this that have been made in a very shabby fashion. I am quite prepared to adopt a bipartisan approach to arts as I believe it should be, but that is not to countenance high handed and unreasonable and disgraceful decisions, assassinating theatres which have given magnificent service to South Australia, that have been funded on a shoestring and where there has been no public waste whatsoever compared with some of those Government departments out there that are losing money hand over fist through shoddy administration.

So, the Friends of the Stage Company will certainly maintain their rage for the Stage and I can assure honourable members opposite that I will do likewise. I urge all members of the Council, irrespective of their political affiliation, to support this important motion.

**The Hon. R.J. RITSON:** I had not intended to speak in this debate but I will because of a matter that the Hon. Mr Davis raised. It will be the world's third briefest political speech. The Hon. Mr Davis referred to the difficulties of the Troupe Theatre and raised the rhetorical question as to why Troupe was not touched and why the Stage Company was singled out. There is a very obvious reason. It is common knowledge that there is an annual Marxist summer school for the promotion of socialism through the performing arts. The Troupe Theatre appears to be very much a product of that. The Hon. Mr Peter Duncan has been notable for attending the Troupe Theatre groups and discussing with them the promotion of socialism through the performing arts. In a liberal democracy I do not deny anybody their freedom to do that. I sometimes wish my own Party had enough enthusiasm to be a Party of political activists. The simple fact remains that the Labor Party would not have dared touch Troupe, even if it had been $100 000 in the red. It had to pick on an excellent apolitical group and that is the beginning and the end of it, Madam. The Labor Party simply would not have dared to touch Troupe—

**The Hon. R.I. Lucas:** Or Peter Duncan.

**The Hon. R.J. RITSON:** Or Peter Duncan's children. I also urge honourable members to support the Hon. Mr Davis's motion to save this particularly valuable and high quality theatre company.

**The Hon. C.M. HILL:** I support the motion moved so well by the Hon. Legh Davis. The real intent of that motion and the reason that has spurred him into his action in raising it in this Chamber is that he wants this decision of the present State Government reviewed as a matter of urgency. I think that honourable members, on both sides, taking a bipartisan approach to this arts question, ought to support this move to ask the Premier to review this most unfortunate decision.

I was very disappointed to hear about it. It was not so much with anger that I rose to speak, but with some sadness, because somewhere along the line, whether through the

advice that the Premier has been given or for some other reason, the Premier has, I am quite sure, erred in deciding that the Stage Company will not be granted State funding in the next financial year. Of course, this is a breach of undertakings given by the Premier to the arts. If the balance of the appropriation to the Stage Company for the current financial year is not paid to it, that will be a breach of budget legislation debated and passed by this Parliament, because in the lines under the arts portfolio it was clear that an allocation was approved, by the Government in the first instance by bringing the budget before the Parliament, and then by the Parliament by passing that Bill.

The Stage Company has played a very important role in the general fabric of the performing arts in South Australia—I think a far more important role than many people understand. I am not simply talking about the quality of its performances but stress that it has been providing what I will call intermediate theatre for South Australian audiences. Its position in this structure is between the experimental theatre, which has been referred to as Troupe—that is basic, radical theatre—and the best professional theatre. I disagree slightly with my friend and colleague the Hon. Dr Ritson, because I believe there is a need for that kind of experimental theatre in the overall picture. If it gets political in its radicalism, then I do not object to that. In fact, when I held the arts portfolio I increased the allocation to Troupe because it was in its infancy in its new theatre at the Unley Town Hall. I believe that there is a need for that.

At the top of the structure we have the best professional theatre that can be found in the world—that is, of course, the State Theatre Company. In between, there is a need for at least one company to provide this high quality, excellent intermediate theatre, and the Stage Company has filled a particular role in that structure. In fact, I think that it has provided that in a very excellent way. I have always envisaged an upward thrust for actors, technicians and practitioners in South Australia to move up the ladder, so to speak, through these three levels. Nothing pleases me more than to hear of an actor or technician who started in Troupe and who is now working with the Stage Company or, alternatively, when I see somebody from the Stage Company who has moved up and emerged as a top professional actor with the State Theatre Company. If we are really to build this structure intelligently we have always got to retain an intermediate theatre: that aspect is shattered by this decision.

I do not think that aspect has been fully considered by those who are responsible for the decision. In a city of such prestige in the arts this three-tiered plan is essential as part of the orderly performing arts development. Of course, this plan did get out of kilter, so to speak, a year or two ago when our top State Theatre Company began messing around with experimental theatre. It did not understand its role or responsibility of performing top professional theatre in all of its facets. However, with the present Artistic Director and General Manager, the position has very much improved.

I wanted to support and pursue the structure I have mentioned to such a degree that I foresaw the time in some years to come when the Stage Company could, in fact, take over the role of the State Theatre Company. I think that if it had performed well it should have emerged as our top professional company and, incidentally, I think it would have done that at about half the cost of the present State Theatre Company. That would have meant much more money could have been allocated to other areas of the arts. I think we would have then seen a truly South Australian company providing top professional theatre. However, now it seems that the Government has placed the Stage Company on the chopping block, and the axe is held high. Whether it is about to fall totally remains to be seen.

From a human point of view the decision by the Government seems to me to be quite cruel. We have John Noble, a South Australian boy, educated at Rostrevor College. He was a public servant for a short time, I understand, and pursued his ambition of acting and of the theatre. He even gained experience as an administrator on the board of the Adelaide Festival Centre Trust. He built up an enviable reputation, gathered people around him, and worked for very little income. So many other people, because of commitment and love of the theatre and a special will to act and help small theatre in such a location as the Space, have supported him and the company.

Indeed, we read where top playwrights and actors have been involved at the Stage Company and at that particular level many contributions have been made with very little remuneration to those people involved. Under Noble's leadership and direction the company has gained a splendid reputation interstate and overseas. It has played an important part in putting South Australia on the arts map. I stress that, basically speaking, South Australians have been involved; it has not imported many people from interstate, although there are occasions when it does occur. Basically, it has been a South Australian operation and its standards have been extraordinarily high.

I do not wish to repeat details given by the Hon. Mr Davis, but just mention actors like Dennis Olsen and Daphne Grey; playwrights like Williamson, Steve Spears and Rob George—just to name a few people who deserve the encouragement and support of the Government and in return for that they give their all so that they can write plays, have them preformed, act, and so forth, mainly for South Australian audiences. I stress that they have done this without very much financial reward.

I urge members of this Council (and especially the Minister Assisting the Minister for the Arts) to go to the performance on Saturday 6 December and to judge for themselves the standards reached by this company. I think it is quite cruel that the Premier should suddenly tell this performing group, which is run on a shoestring budget, that in effect it is finished.

When referring to this important structure of these performing arts companies, let us not forget the competitive edge which the Stage Company has provided for the State Theatre Company which after all, with literally a huge supply of funding money, should be challenged from time to time by intermediate theatre in this State. I do not mind whether it is another theatre company, but over a period of time, through hard work, the Stage Company has emerged in this role. If one removes that competition, there is the likelihood of complacency developing in the major company which, in this State, is a Government instrumentality. The inflexibility that tends to develop in State instrumentalities must occasionally be jolted by competition, and this returns to the point that, in the arts, at these top levels we need some competitive edge to get the very best from and to provide challenges for all those involved at that level.

In relation to the breach of an undertaking, I refer to the Premier's presence on the platform at this year's CAPPA meeting on the plaza adjacent to this building. Members may know that CAPPA represents the arts fraternity throughout Australia and, in each capital city throughout Australia when Government budgets are being drawn up, it holds public meetings to try to stress the need for adequate and indeed generous funding from Governments because, other than Governments, it no longer has any patrons. I

have attended these meetings, and a year or two ago I spoke from the platform. This year I was present (although not that happily) in the audience when the Premier spoke. There is no doubt that, in the presence of CAPPA officers and the arts fraternity, he gave a clear undertaking that the Government would not seriously cut grants to the arts. In fact, he left the audience (which was very worried at the beginning of the meeting) in a happy frame of mind.

As a result, despite the fact that all portfolio areas were reduced because of the need for constraints in the overall economy, the Government was fair and just to the arts in the budget, but that is not an excuse for the Government suddenly, less than halfway through the current year, telling these people that there will be no more money next year. When the Minister replies I will be interested to know what will happen to the balance of this year's allocation. There is very little point in giving the arts people undertakings and assurances, on the one hand, that all will be well and then suddenly, on the other hand, striking a blow at a company with the prestige and status of the Stage Company, as has happened.

I can assure the Premier that there are serious misgivings within the arts community about his assurances, which have been forthcoming, accepted in good faith and honoured until this point in time, compared with the sudden blow of striking the death knell to the Stage Company.

I believe strongly that the company should remain on the South Australian scene. I think that this order that the Premier has given should be lifted, and I urge the Premier to look again at this whole question to see what help he can give. I expect that the Government will reply to this debate next week, because I know that the pressure of other work in this Council is great indeed and we have problems resulting from the pressure of other work, but this pressure is very urgent from the point of view of the Stage Company, and I hope the Premier gives his reply through his colleague the Minister Assisting the Minister for the Arts. Nothing would please me and other people more if some compromise and concession could be made by the Premier in that reply.

**The Hon. BARBARA WIESE** secured the adjournment of the debate.

## SELECT COMMITTEE ON ENERGY NEEDS IN SOUTH AUSTRALIA

**The Hon. I. GILFILLAN:** I move:

That the time for bringing up the report of the select committee be extended until Wednesday 18 February 1987.

Motion carried.

## SELECT COMMITTEE ON SECTION 56 OF THE PLANNING ACT 1982 AND RELATED MATTERS

**The Hon. T.G. ROBERTS:** I move:

That the time for bringing up the report of the select committee be extended until Wednesday 18 February 1987.

Motion carried.

*[Sitting suspended from 1 to 2.15 p.m.]*

## MINISTERIAL STATEMENT: SUPPORTED ACCOMMODATION ASSISTANCE PROGRAM

**The Hon. J.R. CORNWALL (Minister of Health):** I seek leave to make a statement.

Leave granted.

**The Hon. J.R. CORNWALL:** In the Council on 22 October I gave an undertaking that the administration of women's shelters in South Australia would be reviewed. I now propose to outline details of that inquiry, including its membership and terms of reference, and also to detail funding allocations for this financial year under the joint Commonwealth-State Supported Assistance Accommodation Program (SAAP). While I acknowledge that the State's 12 women's shelters meet a desperate need in our community and, by and large, do that very well, it must be said that the financial management of a number of shelters has been a cause for concern.

Since the inception of SAAP in January 1985, it has become clear that some shelters have incurred substantial deficits and were only able to function on the basis of advances between quarters. This was very clearly illustrated by an article in the *Advertiser* of 24 October when it was revealed that an unnamed shelter had spent more than $7 400 on furnishings for which no money had been budgeted. The article revealed that the same shelter had overpaid an administrator more than $2 347, which included $1 153 in flexitime payments. An auditor's report on the shelter revealed that a shelter official was paid for 30 days leave when, according to records, only 9½ were owing and that tax on the pay, supposed to have been remitted to the Australian Taxation Office, had never been received.

SAAP, like any program where public money is being spent, requires a level of financial accountability, including an agreement from organisations that they will spend funds for the purposes allocated. As a first step to a sound financial management and accounting base it was decided that the accrued deficits should be paid out. The Government made $88 700 available to the shelters on condition that they sign an undertaking to spend future funds within SAAP guidelines. To date, eight have signed but four have still failed to comply.

The issues of financial management and accountability raised questions about the budgetary processes within these organisations and the involvement of management committees in the administration of the shelters. In order to resolve these matters, I have commissioned a review of the administration of women's shelters with particular reference to budget development and control, accounting processes, and administrative efficiency. The other terms of reference are to: review the management structure of women's shelters in South Australia, in particular the composition and role of committees of management and their capacity to effectively and efficiently manage the staff and resources allocated by the State and Commonwealth Governments; and review the extent to which shelters fulfil their objectives as established under the SAAP guidelines.

The committee of review will be chaired by Mrs Judith Roberts and assisted by an independent consultant, Ms Harrison Anderson. Ms Anderson has had extensive experience in the non-government sector, and as a researcher. She is currently the Chair of the Youth Housing Inquiry. The other members of the review committee are Ms Colleen Johnson of the South Australian Health Commission, Ms Judith Blake from the Whyalla women's shelter, a representative from the Department of Community Services, and a representative from the Department for Community Welfare. It is anticipated that the review will be completed by the end of January 1987.

With regard to the allocation of SAAP funding, this year an additional $713 000 was available, over and above inflation, bringing total SAAP funding this financial year in South Australia to about $6.4 million. The program funds

shelters and services in three areas—the women's shelters, youth shelters, and the general program which deals with homeless families and single men and women.

With my colleague the Federal Minister for Community Services, Senator Grimes, it was decided that the funding priorities this year would be a new facility for young women who had been sexually abused, and an increased allocation in the area of services to youth. The new facility, to be known as Judith House, will be specifically targeted to meet the needs of young women who have been sexually abused, and will offer them accommodation and counselling in a supportive environment. The sum of $24 000 had been allocated in 1986-87, and full year funding of $95 000 will be allocated for Judith House in 1987-88. Judith House, to be located in the north-eastern suburbs, will be staffed by three women, and will offer supported accommodation for up to five young women between the ages of 16 and 22. In addition to providing accommodation, the facility will be involved in counselling, referral and support. It is the first service of its kind to be established in South Australia, and reflects the Government's, and the community's, concern that services to victims of sexual assault should be improved in this State.

Of the additional $713 000, the youth program has been allocated $261 240. While acknowledging very real need in the area of the women's shelters, it was held that services in the youth and general areas have, in the past, not been adequately funded. That new money will establish new services in Whyalla and Port Pirie, at a cost of $119 340. The funds will increase operating costs to five shelters receiving less than the $15 000 minimum level for intensive shelters. Country services have also received a $2 000 increase in operating costs in recognition of the higher cost factors. Coordinators' salaries in youth shelters will also be upgraded in recognition of work responsibilities, and the need to attract high quality staff. The general area will receive an additional $261 000 and two new facilities will be established in the Riverland and at Mount Gambier. The remaining funds will be used to consolidate existing services by upgrading operating costs and staffing levels.

The existing women's shelters are comparatively well established. In the women's area, an additional $176 000 was allocated to establish Judith House, increase staffing at the Riverland shelter and to address existing inequities in operating budgets between shelters. I am pleased that, even in times of great budgetary constraint, we have been able to increase funding under the program. The additional funding, and the benefits that will flow from the women's shelter inquiry, will ensure that SAAP in South Australia continues to be a well administered program which delivers effective and needed services to the community.

## QUESTIONS

### MARIJUANA

**The Hon. M.B. CAMERON:** I seek leave to make a brief explanation before asking the Minister of Health a question about marijuana legislation.

Leave granted.

**The Hon. M.B. CAMERON:** A report in the *News* today states that when the Controlled Substances Bill was introduced to Parliament the member for Price, Murray De Laine, had tried to speak to the Minister of Health regarding his suggestion for a compromise for the on-the-spot fines clause. The story says, when quoting Mr De Laine, that the compromise involved supporting on-the-spot fines for a first offence, but imposing a court conviction for a second or subsequent offence.

The member for Price, it says, quoting him directly again, tried on two occasions to talk to the Minister of Health about his suggestion but the Minister was 'too busy'. I just do not believe that a Government Minister does not have time to see a member of his own Party who has doubts about a Bill. He obviously does not think that the views of other members of his Party are important.

The whole marijuana controversy has revealed some very odd happenings within the Labor Party, particularly in another place. It is quite clear to everybody that the member for Price was restrained from voting on the first occasion because he did not agree with the virtual decriminalisation of marijuana. We are now told that the Minister would not even grant him the courtesy of sparing a few minutes of his time to hear his concerns. The member for Price, according to the *News* story, was also told by the Government Whip in another place that it was too late for the Government to change the Bill when he expressed his concerns. My questions are:

1. Why was it too late to change the Bill when the member for Price suggested the on-the-spot fine alternative?

2. Why did the Minister of Health fail to see a member of his own Party who had concerns about the Bill that the Minister introduced?

**The Hon. J.R. CORNWALL:** The reason why it was too late to change the Bill when the member for Price, Murray De Laine, spoke to me was that the legislation had already been through for a week. His first approach to me was immediately after a Caucus meeting on Tuesday of the following week when the Bill was already well through. I have the best ministerial staff in South Australia; I do not think that anybody seriously questions that.

**An honourable member:** In the world.

**The PRESIDENT:** Order!

**The Hon. J.R. CORNWALL:** That is possible, but I do not make that claim. I have the best ministerial staff in this State. Whenever anybody rings on any matter that might be even remotely sensitive that matter is brought to my attention within minutes. It was never drawn to my attention that Mr De Laine wanted to speak to me at any time. He approached me after the Caucus meeting, as I have just said, of the Tuesday of the week following the Bill being passed. I recall with great clarity that he said to me, 'I would like to discuss an amendment to clause 8 with you.' I said to him, very politely 'You are far too late.'

*The Hon. J.C. Burdett interjecting:*

**The Hon. J.R. CORNWALL:** This was a week after the Controlled Substances Act Amendment Bill had been passed in the House of Assembly. Mr De Laine has not been a terribly fast learner prior to this—

*Members interjecting:*

**The Hon. J.R. CORNWALL:** —but I think that he has been on a very fast learning curve in recent weeks and I am sure—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. J.R. CORNWALL:** Let me also make very clear that I never spoke to Mr De Laine at any time prior to the vote being taken on that Bill in the House of Assembly. I never spoke to Mr De Laine at any time prior to the vote being taken. Mr De Laine—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. J.R. CORNWALL:** —as I said, may have been a slow learner prior to—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. J.R. CORNWALL:** It certainly does for most of us. Mr De Laine has been on a very fast learning curve, and I am very confident that, in future, Mr De Laine will know that if one wishes to discuss amendments it is normal to do that before the Bill has been dealt with.

## COUNCIL RATINGS

**The Hon. L.H. DAVIS:** I seek leave to make a brief explanation before asking the Minister of Local Government a question about minimum council ratings.

Leave granted.

**The Hon. L.H. DAVIS:** The Local Government Association annual meeting held in conjunction with the Local Government Financing Authority annual meeting was held on 25 October 1985, just weeks ahead of the 1985 State election. The Minister of Local Government, the Hon. Ms Wiese, spoke at this meeting, which was attended by key representatives of local government throughout the State. In her presentation to those local government representatives she said:

> Two issues seem to have arisen that I believe should be settled, issues, that is, of particular concern to local government. First, there is no suggestion whatsoever that the ability to levy a minimum rate should be removed.

That was an unequivocal statement by the Minister of Local Government— just one year ago—ahead of a State election—to key local government representatives. What has happened in the past 12 months which has resulted in the Minister doing what is now a quite characteristic 180 degree backflip?

**The Hon. BARBARA WIESE:** It is quite true that I made those statements at the annual general meeting of the Local Government Association last year, and what has happened since that meeting is that no organisation—the Local Government Association included—has been able to provide adequate information to me which would support the case for maintaining a minimum rate. It has been—

**The Hon. L.H. Davis:** You said there was no suggestion whatever that the ability to levy a minimum rate should be removed. You were responding to the issue.

**The PRESIDENT:** Order!

**The Hon. BARBARA WIESE:** That is right. At that time my advice was that it was possible and that information would be supplied to me which would indicate very clearly to me that there was a basis for a minimum charge to be levied by local councils on ratepayers. Since that time, although I have asked for that information to be provided to me, it has not been possible for people, apparently, to make the assessments. It is very difficult to work out what makes a minimum charge in local councils. It seems to vary from council to council, depending on the services they provide and the level of those services.

Therefore, since that information has not been available, it has been reasonable in my view to change my mind. Any reasonable Minister—any reasonable Government—with new information will change their mind.

*Members interjecting:*

**The PRESIDENT:** Order!

*The Hon. L.H. Davis interjecting:*

**The PRESIDENT:** Order! Order, Mr Davis! You have asked your question: you can listen to the answer or I will name you.

**The Hon. BARBARA WIESE:** It is absolutely outrageous to suggest that, in light of new information, a Minister should not change a policy position if that is a reasonable thing to do. Certainly, that is what I have done, because the information on which the original decision was based was not there.

I have now adopted a policy which, when the new Local Government Act Amendment Bill is introduced into Parliament, will make no provision for minimum rates, and that is a perfectly proper decision to take. When the decision for minimum rates—

*Members interjecting:*

**The PRESIDENT:** Order! Order!

**The Hon. BARBARA WIESE:** Ms President, minimum rates were introduced into the Local Government Act some time in the 1930s on the basis that it was a reasonable idea, at that time, for a minimum rate to exist in order to cover the cost of sending out a rate notice. In this day and age the amount of money that is charged by various councils around the State as a minimum rate is not only increasing but is getting right out of hand. It is inequitable and unreasonable that people with low valued properties and who tend mostly to be the low income earners in our community should be shouldering the tax burden of local government rates for those wealthier people in the community. I stick by that principle. It is proper, and it is a proper policy position. That is the amendment I will be introducing in this place.

I will quote from some of the statistics that have emerged during the past 12 months to indicate what is happening with the minimum rate in South Australia. In South Australia 69 councils are charging $200 or more as a minimum rate; and five councils are charging between $300 and $400. Last year my information from organisations such as the Local Government Association was that a minimum rate was a reasonable proposition because it was meant to cover a minimum range of services. The Opposition cannot tell me that those amounts of money are reasonable or that this is not a distortion of the rating system in local government when in a quarter of the councils in this State more than 50 per cent of properties are being charged a minimum rate. The Opposition cannot tell me that all those properties would be paying the amount of money that they are currently paying if it was based on equity. For that reason—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. BARBARA WIESE:** —having received new information I have adopted the policy position that I now maintain. It is a very reasonable and equitable one and anyone in the community who bothers to look at the facts will agree with it.

## VIDEO GAMES

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

Leave granted.

**The Hon. K.T. GRIFFIN:** The Classification of Publications Board Annual Report tabled yesterday refers to concerns about the impact of new video computer games, some of which (to the board) appear to emphasise violence. Also, some of those games portray pornographic material. Remembering that they are accessible particularly to young children, that causes some concern. The morning newspaper today pursued that issue and, among other things, referred to one video computer game which was banned by the board during 1985-86 involving a chase in which the aim was to catch and rape the person being chased. The newspaper report indicated that the Attorney-General was to seek information about the board's concern. My informa-

tion is that there are a variety of video games available in South Australia which would cause concern to parents if they knew what was on them.

Many are available on the Commodore 64 system, which seems to be the most readily available computer to children and, according to people I have spoken to, seems to be in for something of a revival. I am told that there is no way that access to these video computer games can be limited because of the sophistication of the technology and access to data through modems anywhere around the world. These video computer games are frequently advertised and are reasonably accessible to young people as well as to adults. Those who know more about computers than I do tell me that the law is somewhat behind technological developments, for example, from day one advertisers on the Viatel system were in breach of South Australian law by offering gifts in circumstances where a payment had to be made first and other goods purchased. Some advertisers, I am told, on that system have now modified their advertisements to exclude South Australians.

Some controls over advertising of video computer games and services may in some measure curb the availability of pornographic or violent games. However, that appears to be only part of the solution. Those who have some experience in this area suggest that ultimately education is the answer so that there is an informed and educated public able to make a discerning choice. This leads to a conclusion that some group ought to be established to study the issue and propose initiatives to cope with the problems that are, I am told, likely to expand rapidly. My questions to the Attorney are:

1. What solution does the Attorney see for the problem referred to by the Classification of Publications Board in its annual report?

2. Will the Attorney consider the arranging of a group comprising, amongst others, lawyers, computer experts, educationists and regulators, such as the Classification of Publications Board, to examine the present and potential legal problems associated with video computer games and the access to pornographic, violent or otherwise offensive material on computers with a view to developing and recommending a strategy for dealing with those present and potential problems at the earliest opportunity?

**The Hon. C.J. SUMNER:** My understanding is that these video computer games were covered by the existing law in any event and, if they were sold, could be subject to prosecution if they came within the terms of the Summary Offences Act. However, the Classification of Publications Board has raised the issue and I have said that I will seek further information from it about the matter. It may be that some changes to the law are necessary but basically, as I say, I think the law at present is sufficient to cover classification of such games. Whether anything further needs to be done about the matter, once I have made inquiries of the board as to the issue it has raised—I should say that I think it was the previous board's report to which the honourable member is referring but the board substantially, although not completely, is a new board due to the retirement of members on the old board—and I will certainly take it up with the board. Whether there is a need for any other group to study the issue it is not possible for me to say at the moment but, once I have made further inquiries, I will consider the honourable member's suggestion.

## COOPERATIVES

**The Hon. I. GILFILLAN:** I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister of Labour, a question about cooperatives.

Leave granted.

**The Hon. I. GILFILLAN:** In South Australia the Cooperatives Act was passed in 1983 and has now been implemented, but there have been very few other Government initiatives to assist the cooperatives sector. Even in relation to the new Act, the regulations accompanying the Act took several years to be drawn up and the Cooperative Advisory Council has yet to be formed, even though it is provided for in the Act.

In Victoria, by comparison, the Ministerial Advisory Committee on Cooperation was formed in 1984 to advise the Victorian Government on appropriate policies and legislation for that State's cooperative movement. The committee's report has now been released and comments sought on its 63 recommendations dealing with the future development and expansion of the cooperative movement. The New South Wales Government has now formed the Ministerial Council on Future Directions for Cooperation and a number of working parties to examine proposals for the future direction of the cooperative movement in that State.

In South Australia, with the previous Minister of Labour, I was part of an exploratory committee which grappled with an initiative for cooperatives. The Hon. Jack Wright showed great enthusiasm and energy in pushing on this matter. It is very frustrating that at this stage we have seen very little action in South Australia. The Victorian Ministerial Advisory Committee on cooperation has issued some material. Before asking my question, and to remind honourable members of the significance of the cooperative movement, I point out that the philosophy as quoted by the International Cooperative Alliance states:

> The common element at all times has been that cooperation at its best aims at something beyond promotion of the interests of the individual members who compose a cooperative at any time. Its object is rather to promote the progress and welfare of humanity. It is this aim that makes a cooperative society something different from an ordinary economic enterprise and justifies its being tested, not simply from the standpoint of its business efficiency, but also from the standpoint of its contribution to the moral and social values which elevate human life above the merely material and animal.
>
> The cooperative movement has a long and proud history throughout the world. It is an important and growing third sector of the Victorian economy and society.

We believe that it should and could be a very important third sector of the South Australian economy, and we are very keen to see the Government follow what was in everyone's opinion part of its original intention. How does the Government propose to assist the development of the cooperative sector in South Australia? When will the Cooperative Advisory Council be set up in South Australia?

**The Hon. C.J. SUMNER:** The Government has done a considerable amount to assist the cooperative sector in South Australia. The honourable member's accusations are quite wrong. With respect to the financial sector, the Government has been very supportive of building societies and credit unions. With respect to the industrial and agricultural sectors, the Government also has been very supportive of cooperatives, particularly in the Riverland.

*The Hon. M.J. Elliott interjecting:*

**The Hon. C.J. SUMNER:** The honourable member seems to consider himself an expert in the Riverland; however, I understand that he has left that area, so he cannot be very enthusiastic about it. As I understand it, the Government's actions in the Riverland with respect to the cannery and the cooperatives in that area have produced reasonable results in recent times. So, the Government has been supportive of cooperatives. In addition, some investigations have been done into alternative forms of cooperatives, and no doubt they can be pursued further as time goes by.

The fact that the other States have produced some reports in this area is useful and no doubt they will be taken into account when deciding what further action might be needed in support of cooperatives. There seems to be a bit of an obsession in Australia whereby, if one State has a committee to examine a particular area, it is almost a status symbol: other States have to form a committee to do the same thing. People do not seem to realise that we might save a lot of time and energy in Australia if individual States coordinated some of their actions in this area—instead of everyone trying to grandstand and herb off, taking the initiative in a particular area for whatever purpose. It would be much better if individual States coordinated their activities.

*The Hon. R.J. Ritson interjecting:*

**The Hon. C.J. SUMNER:** Yes, I agree.

**The PRESIDENT:** Order!

**The Hon. C.J. SUMNER:** The honourable member is quite right. I think in the area of law reform, for instance, there is a lot of 'Keeping up with the Jones's' by the various States all trying to make good fellows of themselves in law reform. The result is that the effort is duplicated all around the country. Just because something is happening in another State or there is an inquiry in another State does not mean that South Australia automatically has to have an inquiry on the same topic. It may be beneficial to use the initiative in another State as the basis for action in South Australia with some modifications to local circumstances rather than duplicating the work in each particular State. However, that is somewhat of an aside.

My basic point is that the Government has been very supportive of the cooperative movement. The question of the Cooperatives Advisory Council is a matter for which I am responsible and it should be appointed in the very near future. As to the activities that are being conducted within the Minister of Labour's portfolio (I think in any event they now come within the domain of the Minister of Employment and Further Education), I will refer the honourable member's question to that Minister to see whether any further information can be provided.

## HIGHWAYS DEPARTMENT EMPLOYEES

**The Hon. PETER DUNN:** I seek leave to make a brief explanation before asking the Minister representing the Minister of Transport a question about Highways Department employees working on weekends.

Leave granted.

**The Hon. PETER DUNN:** While in the Whyalla area last weekend I observed a Highways Department gang working—

*Members interjecting:*

**The PRESIDENT:** Order!

**The Hon. PETER DUNN:** —on the highway between Cowell and Whyalla. It was a Saturday afternoon, but that fact did not make me wonder why they were there. However, the following afternoon while travelling between Whyalla and Kimba on a dirt road which is travelled by few people I came upon a sign which read 'Grader ahead'. That was unusual, because it was a Sunday afternoon. Around the next corner I found a Highways Department grader followed by a vehicle containing two persons. They were grading that road on a Sunday afternoon.

**The Hon. J.C. Irwin:** There were three people?

**The Hon. PETER DUNN:** There were three people, but that is not uncommon; that is normal for the Highways Department, and it is fair and reasonable. We have just seen high costs result in the reduction of the gang working on the Marree to Birdsville Track from 10 persons to four persons. The reason given for that reduction was financial constraints. My questions are:

1. Is it now standard practice to have Highways Department graders operating on weekends and public holidays?
2. Is it now standard practice to have Highways Department gangs working on weekends and public holidays?
3. Are these workmen receiving penalty rates?
4. What is the reason for this practice of weekend and public holiday work by the Highways Department?

**The Hon. J.R. CORNWALL:** I will refer those questions to my colleague in another place and bring back replies.

## HUMAN SERVICES

**The Hon. J.C. IRWIN:** I seek leave to make a brief explanation before asking the Minister of Local Government a question on human services.

Leave granted.

**The Hon. J.C. IRWIN:** On Thursday of last week I asked the Minister a question which was only partially answered and part of the answer has given rise to further questions. In August this year I asked a question on human services and the Minister referred us to a Cabinet decision in May outlining in broad terms a State Government policy on the question of local government's role in the delivery of human services. As well the Minister said:

> There is very close cooperation between the various State Government Ministers with an interest in the human services area.

In answer to my question last week the Minister of Local Government said:

> The Government is approaching this matter of the local government role in the delivery of human services in a careful and measured way because we are very much aware of the misapprehension that exists in some sectors of local government. We understand the reluctance on the part of some councils to become involved in the delivery of human services because they largely fear the financial costs that may be involved with that. For that reason, we are taking this policy development step by step, carefully and in close consultation with local government at every step along the way.

Further in that answer the Minister of Local Government said:

> On the question of finances and funding arrangements it will be the responsibility of individual departments to negotiate with councils about appropriate contractual arrangements and other matters. The Minister of Health has already embarked on programs of that kind and negotiated extensively with local councils about the delivery of services.

In view of what the Minister of Local Government has said, does she agree that it is not going to be helpful if her colleague the Minister of Health, or indeed any other Minister with an interest in human services, goes about negotiating extensively with local councils if those negotiations are not part of a well negotiated package following extensive consultation with local government?

Anyone can see that there is a hint of adhockery appearing already in what we all know and believe is a very delicate area. Indeed, I said last week that local government will not take kindly to a policy regarding human services being implemented in dribs and drabs. I ask the Minister: is this part of the 'careful way' she will treat local government and is this part of the 'step by step' way in which she will consult with local government? I ask again: will the Minister table the report of the task force on human services?

**The Hon. BARBARA WIESE:** First, regarding the question of the task force report, I am happy to tell the Council that the full report will be a public document and available to councils. However, the ministerial statement that I made during Local Government Week is, in fact, a summary of

what is contained in the task force report. So, it will not be substantially different; there will merely be more detail on particular issues. That is consistent with the approach that we are taking on this question of the delivery of human services and local government's role in the process.

I indicated last week, and I have said on every occasion that I have spoken on this issue in a public place, that it is our intention to consult very widely on all of the issues involved to make sure that everyone in local government is aware of the direction in which the State Government is heading and to be sure that local government has a say in the development of the policies that we are pursuing at the moment with respect to this question. That approach will be the way we will go in the future as it has been in the past.

With respect to the Minister of Health, if the honourable member has particular criticisms to make about particular things the Minister of Health has done, he should probably direct his questions to the Minister of Health so that the Minister has an opportunity to answer for himself and to explain the approach that he is taking with respect to health services and the development of community based health services in particular.

What I can say, as Minister of Local Government in my capacity as Minister coordinating the work we are doing with local government, is that the Minister of Health has been pursuing a policy with local government which is quite consistent with the Government's general thrust in this area and any negotiations that the Minister of Health has had with local councils about their role in the areas in which he has some responsibility are being conducted within the overall Government policy framework. I do not think there is anyone who could quibble with that. It is quite right. The Minister of Health has been negotiating with various councils on particular issues and about particular programs and it is all being done quite consistently with the policy that we are pursuing.

I am not sure what sort of implication the Hon. Mr Irwin is trying to make that would suggest that anything else is happening. I want to stress that this is a very sensitive issue, which will not be assisted by members of the Opposition, or anyone else in this community, trying to drum up issues or complaints where they do not exist. The Government's performance in this area has so far been second to none. We have consulted at every step along the way and we have included local government members in our discussions about how this process of delivering human services at the local level might be achieved. That is the way we will proceed because, as I said before, there is no way that such a policy is going to be implemented or become effective if we do not have the agreement and cooperation of local government.

There is also no doubt that there are a range of services that are delivered in our community which are much better delivered at the local level. Local government, which is the level of government closest to people in local communities, obviously can play a very important role. Local councils around South Australia are concerned about making sure that people in their communities receive services in the best possible way. When they understand the approach that we are taking and when we can discuss the details of how it might be brought about, then I think we will find that more and more councils will become involved in the sorts of programs that we have been talking about.

As I also said last week, although I think that that will happen over time it is likely to be quite a long-term project in some parts of the State because at this stage there is a greater willingness on the part of some councils to become involved than on the part of others. In those areas where there is not yet the necessary level of understanding, we need to discuss with the people involved the unresolved issues, and that will take time. However, I firmly believe that local government will come around to agreeing with the State Government that this is the best way to go because it is in the interests of the people that we serve and councils will agree with that when they understand the approach that we are taking.

*The Hon. C.M. Hill interjecting:*

**The Hon. BARBARA WIESE:** Yes, we are going to give funds in certain circumstances. I have already indicated that and, if the Hon. Mr Hill bothered to read the policy statement, he would see the very extensive arguments contained in that policy statement concerning our approach to the question of funding.

**The Hon. C.M. Hill:** That is what they are worried about.

**The Hon. BARBARA WIESE:** I am well aware of that.

**The Hon. C.M. Hill:** They haven't got any money and are doubtful you are going to give them any.

**The PRESIDENT:** Order!

**The Hon. BARBARA WIESE:** Those are exactly the sorts of issues that we need to resolve with local councils and we will be discussing those issues with councils around the State.

## WASTE MANAGEMENT

**The Hon. M.J. ELLIOTT:** I seek leave to make a brief explanation before asking the Minister of Local Government a question about waste management.

Leave granted.

**The Hon. M.J. ELLIOTT:** According to a recent OECD report, Australian households have been disposing of about 7 000 tonnes, in small quantities, of hazardous waste each year, so it would be reasonable to assume that South Australia would have been disposing of about 500 tonnes of hazardous wastes. The major problem components of these wastes are oil and mercury from batteries, fluorescent light tubes, etc. These can have an effect on groundwaters and can contaminate soil with most of the waste going into landfill or drains. Has the Waste Management Commission either alone or in consultation with the Department of Environment and Planning, considered any sort of scheme whereby vendors or producers of products that are potentially hazardous could provide a means of collection of the waste and subsequent correct disposal of it, or secondly, whether some sort of public education through labelling or other means could be undertaken?

**The Hon. BARBARA WIESE:** I am not clear about the types of waste that the honourable member is discussing. Certainly, the Waste Management Commission, in consultation with the Department of Environment and Planning, has very extensive procedures that it follows with respect to the transportation and disposal of waste products. It certainly works with producers of various forms of waste and gives advice and assistance on how that waste can most safely be disposed of. If the honourable member can provide further details about what specific hazardous wastes he is talking about, I will be happy to refer those matters to the Waste Management Commission, which I am sure will be happy to provide me with a detailed report about the measures that it takes.

## WOMEN'S SUFFRAGE PETITION

**The Hon. DIANA LAIDLAW:** I seek leave to make a brief statement before asking you, Ms President, a question about the women's suffrage petition.

Leave granted.

**The Hon. DIANA LAIDLAW:** Last Thursday, I asked you whether you shared my view that this petition, which is an important item of State and national heritage, should be on public display. At the time, I understood that the petition was in the basement of Parliament House and had been there for about a year. In response to my question, you indicated—quite rightly—that 'being a fairly ancient document the conditions of its display would need to be carefully controlled and it may be that certain conditions are necessary for its protection, which would take priority over full-time display'.

I believe that those expressions of caution are appropriate. However, following Question Time a representative of the media sought to locate the petition and, with the assistance of an officer from the House of Assembly, actually went to the vaults and saw the petition, which was rolled up in a cardboard box which was on the floor of the vault and which was not even located on the shelving. The box in which it is rolled up has no lid and there is no other protection. It is certainly not in controlled conditions.

I highlight these facts because it would seem that storage conditions within Parliament House are completely inappropriate for the proper conservation of this ancient document, as you referred to it. I therefore ask that, in addition to the inquiries you have undertaken to pursue to ascertain whether the petition can be displayed publicly, in the interim you also make inquiries to see whether this document and other important items of heritage that may well be stored in this building can also be looked at in terms of their conservation conditions and whether or not something should be done about this important matter.

**The PRESIDENT:** Following the honourable member's question of me last week, I made inquiries regarding the women's suffrage petition. I stress again that it is not my responsibility, or that of the Legislative Council, as it was a petition presented to the House of Assembly nearly 100 years ago. It is the responsibility of the Speaker and the House of Assembly.

The petition was removed from public display because sunlight was falling on the glass and it was felt that that would result in considerable heating of the document and that it was most unwise for it to be so heated.

It was then removed, I was told, to the vaults where, although there is no controlled atmosphere, there is no great temperature fluctuation throughout the year. The Speaker and I have made inquiries of the State Conservation Centre and people from that centre are coming to Parliament House tomorrow to discuss how this document and others should be conserved and to give advice about the best way of dealing with such historic material, of which I am sure Parliament House contains quite a considerable quantity. I have not replied to the honourable member's question before as I hoped to have further information after we discussed this matter with the Director of the State Conservation Centre.

## BUGA UP

**The Hon. R.I. LUCAS:** I seek leave to make a brief explanation before asking the Minister of Health a question about traineeship programs for membership of BUGA UP.

Leave granted.

**The Hon. R.I. LUCAS:** As members would be aware, BUGA UP is an acronym for an organisation which involves itself in activities of vandalism, defacing cigarette advertisements and posters, and stands for 'Billboard utilising graffiti against unauthorised promotion'. I will quote from the most recent edition of the *Education Gazette* for the week ending 28 November 1986 under the heading 'Come Out against cigarette advertisements' which states:

> One of the most successful activities organised in Britain's schools will be part of Come Out '87 [in South Australia] with assistance from the South Australian Health Commission. Last year, over 20 000 British secondary school children designed 'Scramble-an-ad' posters which converted well-known cigarette advertisements into positive health messages. The 12 most effective were used as artwork in a four-colour calendar which was made available throughout the United Kingdom.
>
> South Australia's Come Out Project will have the same aim to alter cigarette advertisements so that high school students, instead of being influenced to smoke a particular brand (especially Alpine, Escort, Marlboro, Winfield) will be led to question the wisdom of smoking any brand, despite pressure from the media or their peers. A letter explaining the project will be sent to all high school principals before the end of this term. Five hundred classroom teaching packs including project details, optional lesson plans, student guidelines and entry forms will be available in December.
>
> The project will be announced in the *Advertiser* and on radio station 5KA and country stations. Entries will be invited from all year 8 and 9 students. Those judged the most effective will be exhibited at Come Out's 16 visual arts display points across the State, and the top 12 will be included in a 1988 school calendar.

My question is not a criticism of the Come Out festival or of the concept of a poster competition on the health advantages of not smoking. However, this Health Commission and Education Department program goes far beyond that. It will certainly encourage and provide experience to young people to deface legal posters and advertisements being used by cigarette manufacturers in South Australia. As I indicated, it also singles out quite unfairly some individual manufacturers of cigarettes. This program has raised much concern in the educational community, and a number of people have contacted me already complaining about the intentions of the program. In my view, it is clear—and it has been suggested to me—that it is better described as a traineeship program for membership of BUGA UP. I am also advised that the Director of the Health Promotions Unit—

*The Hon. J.R. Cornwall interjecting:*

**The Hon. R.I. LUCAS:** You can answer the question: let me give the rest of it first.

**The PRESIDENT:** I hope in the rest of your question there will be no personal opinions. They are not permitted.

**The Hon. R.I. LUCAS:** They would be out of order, Ms President, and I would certainly not allow personal opinions to enter into an explanation.

**The PRESIDENT:** I think you have already.

**The Hon. R.I. LUCAS:** I have also been advised that the Director of the Health Promotion Unit, appointed by the Minister of Health, Dr Cornwall, and a well known opponent of the cigarette industry, Dr Simon Chapman, has been involved in the activities of BUGA UP. I am advised that a *curriculum vitae* of Dr Chapman in 1981 listed one of his activities as being a consultant adviser to BUGA UP.

**The Hon. R.J. Ritson:** That is vandalism. Isn't that against the law?

**The Hon. R.I. LUCAS:** Vandalism of any legal poster, of course, is against the law. I am also advised that Dr Simon Chapman has been involved in some way in the activities of the organisation BUGA UP. My questions to the Minister of Health are: first, will the Minister review the decision made by the South Australian Health Commission? Secondly, will he consider substituting a separate poster com-

petition concentrating on the health advantages of not smoking, as opposed to the inferences that could be taken from the program currently developed by the Health Commission? Thirdly, will the Minister bring back a report to the Parliament that indicates the level of involvement of Dr Simon Chapman in the past in the association BUGA UP, and, in particular, was he ever a member of BUGA UP? Was he a foundation member of BUGA UP? Was he also a consultant adviser to BUGA UP in 1981, and did this background of Dr Chapman's influence the formation of this program of the Health Commission for next year throughout our schools among impressionable young children in South Australia?

**The Hon. J.R. CORNWALL:** I am very surprised that the Opposition spokesman on youth affairs again is obviously going to bat for the cigarette companies. He complains that the poster competition singles out individual cigarette manufacturers. I would complain very strongly, Ms President, that individual cigarette manufacturers single out particular target groups. Of course, it is no coincidence that the individual manufacturers who have been targeted are those who have specifically directed advertising campaigns towards teenagers. They are the companies which, as a matter of deliberate strategy, target their campaigns to get a new generation of smokers.

They know very well that mature adults—particularly, the over-40s—are giving up smoking at a very rapid rate; that the consumption of tobacco per capita is lower in this State than it has ever been since the Second World War. Their strategies, therefore, as shown with the bikini ad in particular, which caused such outrage among health personnel and every decent minded citizen of this State, was directed quite clearly at young teenage girls. It seems to me that, in those circumstances, to organise a poster competition which is directed at singling out those manufacturers who have tried, through their well targeted, well researched advertising, to induce teenagers to take up tobacco smoking—and nicotine, of course, is a very highly addictive drug—is a deserved form of retaliation.

The poster competition is just that. It is not, as the Hon. Mr Lucas would infer, about sending people out with spray cans. It is asking students to be inventive and imaginative in the ways in which they can convert those billboard advertisements in poster form to anti-smoking messages. Of course, I support that: I support any reasonable action which will get a message to young people that smoking is addictive; that smoking causes more preventable deaths in this State than any other single cause; and that it is well documented that smoking causes cancer, emphysema, bronchitis and peripheral vascular disease, to mention a few. It is well documented and researched that an estimated 1 250 premature deaths per year in South Australia are directly attributable to smoking tobacco, particularly cigarettes.

It is well known that Dr Simon Chapman is a world figure in the anti-smoking movement. He is a member of the World Health Organisation Executive Committee on Smoking and Health. He was quite carefully and deliberately chosen for the position of Director of Health Promotion in this State because of his outstanding record as an anti-smoking campaigner. It is also true, I understand, that he was associated in his earlier days with BUGA UP. BUGA UP, of course, had a very substantial impact during the early days of the anti-smoking movement. I believe that the anti-smoking movement is now so well established and so irresistible that it no longer needs the sorts of gimmicks, but very effective campaigns, that were run by BUGA UP in the early days. The Hon. Mr Lucas, as the spokesman for youth affairs for the Opposition, really should have a look at the way in which the environment and climate in the anti-smoking area has changed so dramatically in the past five years.

During that brief Tonkin interregnum, I am sure people remember very well that the Hon. Jennifer Adamson, as she then was, as Health Minister was a very ardent and very sincere anti-smoking campaigner—but she was sent into limbo. She was absolutely squashed by all of her colleagues, who were nobbled by the tobacco companies. The time has not only come, the time has passed, and if the Hon. Mr Lucas has half as much nous as some would have us believe he does, and if he thinks he has a future as the Leader of the Liberal Party—if he genuinely pretends to leadership of the Party—he surely would have the political nous to realise that a very clear majority of people in this State strongly support the anti-smoking campaigns which are being properly conducted by the Health Promotion Branch of the South Australian Health Commission on behalf of the South Australian Government.

## BEVERAGE CONTAINER ACT REGULATIONS

Adjourned debate on motion of Hon. M.J. Elliott:

That regulations under the Beverage Container Act 1975 made on 13 November 1986, and laid on the table of this Council on 18 November 1986, be disallowed.

(Continued from 19 November. Page 2057.)

**The Hon. C.J. SUMNER (Attorney-General):** In considering this motion to disallow the regulations which set 6c and 4c for non-refillable and refillable bottles respectively in lieu of the previous regulation which was for 15c and 4c for non-refillable and refillable bottles, members should be aware that their vote is of considerable importance and should not be exercised lightly. Members should seek legal advice on the matters that are in consideration by this disallowance motion. I wrote to the Leader of the Opposition in this place (Hon. Mr Cameron) and to the Leader of the Democrats (Hon. Mr Gilfillan) in the following terms:

I refer to the debate on the motion of disallowance of the regulations under the Beverage Container Act moved by the Hon. M.J. Elliott in the Legislative Council and upon which debate will resume on Wednesday of this week.

As you may appreciate, this notice of disallowance, if passed, will restore the differential of 4c and 15c between refillable and non-refillable bottles, prescribed in the original regulations.

In my opinion, such a move would certainly result in the Bond Corporation proceeding with its action in the High Court to challenge the validity of the original regulations.

In the light of this, I can only suggest that you obtain legal advice on the issues before a final vote on the matter. I would be happy to make Mr Brad Selway of the Crown Solicitor's Office available to discuss the matter with your legal advisers.

Alternatively I would suggest that you be briefed by me; the Solicitor-General, Mr J. Doyle Q.C.; and Mr Selway on the issues involved and will be happy to make the necessary arrangements before debate resumes.

I feel that this is a matter that needs to be resolved as soon as practicable because of the commercial uncertainty introduced by the disallowance motion.

**The Hon. R.I. Lucas:** Who did you write to, just the Leader and the Democrats?

**The Hon. C.J. SUMNER:** I have written to your Leader, the Hon. Mr Cameron, and the Democrats Leader, the Hon. Mr Gilfillan.

**The Hon. R.I. Lucas:** Are they at liberty to ask—

**The Hon. C.J. SUMNER:** They are at liberty to allow whoever else they wish in their Parties to be briefed on the topic.

**The Hon. R.I. Lucas:** Very reasonable.

**The Hon. C.J. SUMNER:** It is very proper behaviour, and I would have thought in a matter as important as this it is very necessary behaviour. I repeat, I would not want members to adopt a cavalier attitude to this matter in the light of the potential consequences of the passage of the motion for disallowance. A number of misconceptions about the Government's actions have been peddled in the past few days. I wish to outline as fully as possible the reasons for the Government's action in so far as that is possible, and as fully as possible, given that this matter may now proceed to the High Court.

Certainly, members have been offered and will be given, if they wish, more detailed information and details of the Government's legal advice in the briefings that I have again indicated will be available to them. Before providing some analysis of the issues involved I wish to make it clear that the Government does not believe that this is a case where the regulation can simply be remade. This would create a most unsatisfactory situation for all parties concerned.

If a regulation were remade and then subject to disallowance within 14 sitting days, this would take the potential for further disallowance of a regulation up until February or early March, given the projected sitting dates of the Parliament. I would have thought that this uncertainty would be unacceptable for everyone operating in the marketplace, whether they be the South Australian Brewing Company, the Bond interests, or anyone else. The matter is of such a nature that simply re-gazetting the regulation would not be satisfactory.

Accordingly, the Government wishes to make it quite clear that the vote on this motion of disallowance will, in all probability, determine whether the matter proceeds to the High Court. It is for that reason that I have advised members to seek legal advice and made the offer of full briefings from Crown Law officers, including myself, the Solicitor-General, and the officer in the Crown Solicitor's Office who handled the matter, Mr Selway. The Government wishes to ensure that all members are fully aware of the legal issues which led to the Government's decision to settle the Bond action on terms which preserved South Australia's unique deposit system and maintained a differential between the deposit on refillable and non-refillable bottles.

Members' votes on this motion may well be determining the future of South Australia's beverage container deposit legislation. I intend to outline the Government's position as clearly as possible so that members can be under no misapprehension about the importance of the issue or the Government's position. I now turn to an analysis of the reasons for the Government's action in settling the Bond claim.

**The Hon. M.B. Cameron:** Will you go back to the beginning when you brought the legislation in?

*The Hon. Diana Laidlaw interjecting:*

**The Hon. C.J. SUMNER:** No, I am not blaming anyone. If members care to listen to the debate they will see the reasons for the action that—

**An honourable member:** The mess that you made.

**The Hon. C.J. SUMNER:** The Government has not made a mess of it, I assure the member of that. The matter has been challenged by Bond Brewing; that is the fact of the matter. The deposit legislation, which has been in existence since 1975, has always run some possibility of a challenge in the High Court. Now, that day has come. All I want to do is make the position clear to honourable members that the disallowance of this regulation (the 6c and 4c regulation) will in all probability mean that Bond Brewing will continue its High Court proceedings. Therefore, honourable members must decide whether they consider that to be a reasonable course of action.

The regulations made on 13 November 1986 under the Beverage Container Act and the subject of this disallowance motion were made under a settlement reached between the Government and Bond Brewing. If those regulations are disallowed, the settlement will have been frustrated. The deposit on non-refillable beer bottles will return to 15 cents. There will be a number of practical effects that will flow from the disallowance.

First, the litigation in the High Court would almost certainly be continued by Bond Brewing. That litigation seeks orders from the High Court that the current scheme is invalid by reason of section 92 of the Constitution. Section 92 prevents the State imposing a burden upon interstate trade and commerce unless such a burden is reasonable regulation of that trade. Since the amendment Act came into operation on 1 October 1986, Bond Brewing argued that non-refillable bottles effectively and commercially have been excluded from the South Australian package beer market.

Bond Brewing, which sells in every other Australian State using non-refillable bottles, has produced evidence and argues that it cannot trade economically in this State. The legal advice to the Government is that this burden upon the business of Bond Brewing if verified could only be justified if there are environmental or safety reasons which would objectively justify the burden.

The two reasons that have been proposed are that non-refillable bottles are weaker and more likely to break than refillable bottles and that refillable bottles use less resources and cause less pollution in manufacture and use than non-refillable bottles. Bond Brewing denies that these reasons are valid. In so far as bottle strength is concerned, the tests conducted by Amdel reveal that refillable bottles have thicker walls than non-refillable bottles and that a new refillable bottle is generally stronger than a non-refillable bottle. However, it would appear that new chemical coatings have been developed which substantially strengthen non-refillable bottles. This has the effect that some refillable bottles are not as strong as some non-refillable bottles.

This may be disputed, but there are concerns about this issue. In so far as the use of resource and pollution is concerned, the available evidence is subject to dispute. On the one hand, it is argued that the use of refillable bottles may save some raw material and energy. On the other hand, because refillable bottles have to be washed, the use of refillable bottles may use more water and water pollution than non-refillable bottles. The resources involved are not in short supply and the pollution would not appear to be significant. The problem is whether this reason could reasonably justify the effective commercial prohibition of non-refillable bottles.

In the light of the risks in litigation, the Government's legal advice was that the matter was best settled, on terms agreed, to ensure that South Australia's basic environmental objectives were met. If the court found that the 15c was not justifiable, there is a risk that the court may make comments which would suggest or imply that any difference in deposit amount was not justifiable.

If the litigation is now to proceed, then it should be understood that it is reasonably possible that the end result will be that there is no difference in deposit amount between refillable and non-refillable bottles. It would be indeed ironic if actions by members of this Council for the stated purpose of bolstering and increasing the difference between deposits

on refillable and non-refillable bottles ended in fact with the opposite result.

The Government's and Parliament's intention was to provide an incentive for manufacturers to use refillable containers and to ensure that there were appropriate points of collection for non-refillable containers. The Government's position in the litigation has been consistent throughout. If Bond Brewing can produce satisfactory evidence that the effect of the legislation was not only to create a preference for refillable bottles but was to prohibit non-refillable bottles then problems with section 92 would be exacerbated.

The settlement obtained by the Government achieves the Government's and the Parliament's intention. A preference of 2c a bottle deposit in favour of refillable bottles is retained. The profit margins on package beer sales are such that this preference is meaningful. It should not be forgotten that in Victoria Carlton and United uses and reuses refillable bottles in competition with non-refillable containers and there is no deposit and no preference.

Furthermore, the settlement requires Bond Brewing to enter into making arrangements with marine dealers. A satisfactory collection system is thereby established to the advantage of marine dealers who want the work and to the advantage of retailers who do not want it. Another effect of disallowance will be to create further costs and uncertainty in the beverage industry. A number of producers of beer and wine cooler will have already commenced production of labels as a result of the introduction of the regulation. That cost will be wasted if the regulation is disallowed. Of course, if the litigation is then lost there will be further expense in creating new labels for whatever deposit may then be lawfully imposed.

In the Government's view it has acted reasonably and responsibly in settling this litigation. The Government strenuously defended Parliament's legislation for several months. It succeeded in opposing an application for an injunction that would have prevented the new arrangements from being enforced. However, as the matter progressed it seemed to the Government that it ought to be further considered in the light of the most up-to-date evidence and legal advice and, on that basis, the Government reviewed the issue.

The Government was not constrained by sentiment or political expediency. It has attemped to consider the matter objectively and reasonably. When it became clear that there were risks in litigation in justifying a 15c deposit, the Government's legal advisers recommended that the Government consider a settlement. The Government did so. It believes the settlement achieved was reasonable given the potential problems of litigation. The settlement retains the deposit system.

It ensures that refillable and non-refillable bottles are returned to marine store dealers and it retains a preference for refillable bottles. The Government absolutely rejects the suggestion that has been made in some quarters that the Government has preferred the interstate brewer over the local brewer in reaching the settlement. Certainly, the extent of the preference of refillable bottles over non-refillable bottles is much reduced after the settlement. It should be remembered that when the legislation was introduced in February 1986 the difference in deposit amounts between refillable and non-refillable bottles was only 10c a dozen—it is now 24c a dozen.

The other major complaint was that there was no collection arrangement for non-refillable bottles. Under the settlement these bottles will be returned to marine dealers. However, the settlement is not designed to work to the advantage or disadvantage of any brewer, whether local or interstate. It is designed to achieve the Government's and the Parliament's objectives and intentions in the light of the evidence that has now come to the Government's attention and the advice on the law, including section 92 of the Constitution.

As a final point, I refer to recent comments by the Hon. Mr Gilfillan, picked up by some of the media, that the Government should have enacted a law applying to consumers so as to avoid settling this matter; in other words, he drew some analogy between the Government's action with respect to the tobacco tax situation and the beverage container situation. Frankly, that argument is invalid. It is a tragedy that rational debate on issues such as this has to be clouded by the politically cynical and ill-informed comments that arise from time to time, particularly when they are given credence by the media.

The reality is that there is no legitimate analogy between the two circumstances. The Hon. Mr Gilfillan drew an analogy between this matter and the problems dealt with in the Tobacco Products (Licensing) Bill, now introduced into the House of Assembly. Members who carefully consider that Bill will see that great care has been taken to ensure that the legislation is uniform and non-discriminatory. For example, the obligations on tobacco traders to be licensed are voluntary under that Bill.

Even assuming that a Bill could be drafted that placed a deposit obligation on the consumer rather than the trader—and this would seem to be impossible in circumstances operating in the beverage industry—if the only reasonable justification for that measure is to discriminate against an interstate trader, it would still be invalid under section 92.

More importantly, however, the settlement and the new regulations still achieve the Government's and Parliament's intention when the beverage container legislation was passed this year. In these circumstances there is no need for any imposition on the consumer, even assuming that such an imposition would be valid. The other matter which needs to be dealt with is the allegation that the Government's actions would somehow lead to broken bottles on beaches and an increase in litter. That was raised in an emotive way by the Hon. Mr Cameron a few days ago and, again, it was picked up by some of the commentators.

The Government's actions ensure that the deposit system is retained, and the 6c deposit on non-refillable containers will ensure their return. Therefore, the litter problem will not be worsened by the Government's action. In fact, the deposit system should ensure the return of bottles, as it has in the past, whether refillable or non-refillable. Finally, it is often said that the buck has to stop somewhere. It is usually with the Government. However, in this case, as a result of this motion, it clearly stops with the Liberals and Democrats in this Council.

The Government has acted on the information available to it, including legal advice, and decided that the best course of action was to settle the Bond case, keeping intact its basic environmental strategy, namely, a deposit system which ensures the return of bottles and some differential between refillables and non-refillables. If Parliament now determines that the regulations should be disallowed and the matter proceed to court, that will clearly be Parliament's responsibility.

I have attempted to outline the issues and have offered a full briefing to all honourable members. It is now a matter for the Council to decide after assessment of the information provided and legal advice and an assessment of any risks from litigation. The Government clearly opposes the motion and believes that the settlement arrived at was reasonable in the circumstances, considering the various

issues and the risks which do exist in any litigation and particularly with this litigation. Accordingly, the Government suggests that the Council seriously consider the issues and, having done so, support the Government in not passing the motion which will have the clear effect of throwing the whole matter back into the High Court for a decision (whatever that decision might be). I have indicated what the implications of that might be with respect to our beverage container legislation.

**The Hon. M.B. CAMERON** secured the adjournment of the debate.

## COMPANIES AND SECURITIES (INTERPRETATION AND MISCELLANEOUS PROVISIONS) (APPLICATION OF LAWS) ACT AMENDMENT BILL

**The Hon. C.J. SUMNER (Attorney-General)** obtained leave and introduced a Bill for an Act to amend the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981. Read a first time.

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

*That this Bill be now read a second time.*

The purpose of this Bill is to amend the application of the Commonwealth Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980 in South Australia. The Companies and Securities (Interpretation and Miscellaneous Provisions) Act 1980 is applied in South Australia by virtue of the Companies and Securities (Interpretation and Miscellaneous Provisions) (Application of Laws) Act 1981 as the Companies and Securities (Interpretation and Miscellaneous Provisions) (South Australia) Code. The Code encompasses the general interpretation provisions for use in interpreting cooperative scheme legislation applied in South Australia, that is the Companies (South Australia) Code, the Securities Industry (South Australia) Code and the Companies (Acquisition of Shares) (South Australia) Code. It will shortly apply to the Futures Industry (South Australia) Code.

Section 35 of the Interpretation Code deals with bringing proceedings for indictable and summary offences. The section defines all cooperative scheme offences punishable by imprisonment for a period exceeding six months as indictable offences. In South Australia indictable offences prosecution must be commenced by information. It is then questionable as to whether at present the commission may prosecute offences punishable by imprisonment for a period exceeding six months, summarily. It is inappropriate that the commission should not be able to prosecute some of these offences by complaint and it was clearly not the intention of section 35 that this should be the case.

The purpose of these amendments is to ensure that the Corporate Affairs Commission can follow the practice previously followed under the Companies Act 1962 and continued under the Code to lay a complaint where it wishes the matter to be heard in the summary court. If this amendment is not made and the commission is successfully challenged on its present procedure it would be required to proceed in most cases on indictment with attendant cost increases and a decrease in the number of cases it could prosecute. It is therefore of some urgency that amendments be made.

Not amending the legislation could involve the commission in considerable administrative costs by being required to proceed on indictment by information rather than summarily by complaint. Staffing costs could also increase if the commission is required to proceed by way of information. Involvement in committal proceedings then trial in the district court would limit the commission's prosecuting role with its present staff. This is not warranted as most cases are not of sufficient gravity to proceed by way of indictment. The formal agreement for cooperative companies and securities regulations requires that amendments such as those currently before the Council be approved by the Ministerial Council for Companies and Securities. Such approval has been obtained. I seek leave to have the detailed explanation of the clauses inserted in *Hansard* without my reading it.

Leave granted.

### Explanation of Clauses

Clause 1 is formal.

Clause 2 inserts clause 11a into the first schedule to the principal Act. Clause 11a makes the amendments discussed above.

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

## MEDICAL PRACTITIONERS ACT AMENDMENT BILL

**The Hon. J.R. CORNWALL (Minister of Health)** obtained leave and introduced a Bill for an Act to amend the Medical Practitioners Act 1983. Read a first time.

**The Hon. J.R. CORNWALL:** I move:

*That this Bill be now read a second time.*

The purpose of this short Bill is to create a new structure for the chairing of the Medical Practitioners Professional Conduct Tribunal. The Medical Practitioners Act currently provides for the Chairman of the tribunal to be: a person holding judicial office under the Local and District Criminal Courts Act; a special magistrate; or a legal practitioner of not less than 10 years standing. The tribunal hears complaints alleging unprofessional conduct and may impose sanctions ranging from reprimanding the medical practitioner to cancellation of registration.

It is intended in the future that the tribunal be presided over by a district court judge or a magistrate. While the Act currently allows for the Chairman to be a person of either of those categories, it does not provide adequate flexibility to enable a number of judges or magistrates to act as presiding officer. Taking account of the nature of the work and the substantial time commitment which may be involved in hearings, the Government believes such flexibility is desirable to assist the work of the tribunal. The Bill seeks to achieve that objective. I seek leave to have the detailed explanation of the clauses incorporated in *Hansard* without my reading it.

Leave granted.

### Explanation of Clauses

Clauses 1 and 2 are formal.

Clause 3 provides two definitions that are required by the later amendments.

Clause 4 replaces section 24 of the principal Act with three new sections. The new sections create a new structure for the tribunal which will allow the Senior Judge to nominate a District Court Judge or a magistrate to act as the presiding officer of the tribunal in relation to a complaint or application before the tribunal. A number of judges or

magistrates may be nominated at the one time in respect of different matters. Once nominated the nominee will hear the matter to its conclusion. The Senior Judge must have the approval of the Chief Magistrate before nominating a magistrate.

Clauses 5 and 6 make consequential changes.

**The Hon. R.J. RITSON** secured the adjournment of the debate.

## SELECT COMMITTEE ON ARTIFICIAL INSEMINATION BY DONOR, *IN VITRO* FERTILISATION AND EMBRYO TRANSFER PROCEDURES IN SOUTH AUSTRALIA

**The Hon. J.R. CORNWALL (Minister of Health):** I move:

That the time for bringing up the select committee's report be extended to Thursday 12 February 1987.

Motion carried.

## STEAMTOWN PETERBOROUGH (VESTING OF PROPERTY) BILL (No. 2)

Adjourned debate on second reading.

(Continued from 25 November. Page 2235.)

**The Hon. PETER DUNN:** This Bill deals with one of those unfortunate times when the Parliament must assert its authority. We had a situation in Peterborough arise when there were difficulties with the membership rules and their application to the Steamtown Peterborough organisation, which was dealing with the trains that have now been left there and have become a very interesting part of the tourist trade for that area. A considerable sum of public and local money was put into the operation and developing of the area and restoration of trains; however, it was taken over by an individual who subsequently divested herself of some of the money, with the result that there was a lot of disquiet within the community as to who owned the organisation, who were members of the organisation and what was happening to the funds. A select committee was subsequently set up and an endeavour was made to resolve the dispute on a personal basis. However, that proved to be impossible and consequently a Bill was introduced making some positive recommendations.

The recommendations are that the Steamtown Peterborough Society take over the total running of this organisation. No doubt those people who have invested money in it, for instance the district council, Apex Club and other public organisations, will be rather pleased that this has taken place. As many members would be aware, Peterborough has lost a lot of its sting. It was a very important changeover point for rail gauges for trains travelling to the north, east and west. However, the new standard gauge railway has made Peterborough relatively redundant and the town is gradually running down.

However, they are making every endeavour to develop a tourist industry and this society has been developing the trains, lines and infrastructure to attract tourists to the town. This dispute has been a long and protracted one. I think that this Bill will be very effective and will help to solve the problems in the local community, which was split because of this happening. It was a difficult job, but this Bill will cure the difficulties associated with this matter. I hope it does so quickly for the sake of the local community. I support the Bill.

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

## PAROLE ORDERS (TRANSFER) ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 25 November. Page 2254.)

**The Hon. DIANA LAIDLAW:** This Bill is merely machinery legislation which has the support of the Opposition. It corrects an anomaly that occurred in 1983 when the Act was amended in relation to interstate transfers. At that time section 5 of the Act was quoted as the authority under which parole transfers were handled, when in fact sections 6 and 8 were the appropriate ones. There is a further amendment which aims to remove the system of conditional release for prisoners which was never brought into operation and which is obsolete. As I have indicated previously, these actions have the Opposition's support. I support the second reading.

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

## STAMP DUTIES ACT AMENDMENT BILL (No. 2)

Adjourned debate on second reading.

(Continued from 25 November. Page 2254.)

**The Hon. K.T. GRIFFIN:** This is a Bill for which my colleague, the Hon. Legh Davis, has responsibility in this Council. However, there are some observations that I can make on it because there are issues to which I have drawn attention in relation to other Bills and which are relevant in this Bill. If my colleague is able to speak on the second reading, he can address the issues apart from those to which I now refer.

Basically, the Opposition supports the Bill. I will raise several issues, one in relation to amendments relating to the power of the Commissioner of State Taxes to obtain information, evidence, access to records and a warrant to search and enter premises. That is contained in clause 6 of the Bill, which repeals sections 27a, 27b, 27c and 27d of the Act. Those existing sections are in a form which is in some respects not up to date, although they do in my view confer appropriate powers on the Commissioner of Stamp Duties.

Section 27a was first inserted in 1927 and was amended by an Act in 1937. The most recent amendment was in 1965. Section 27b was inserted, according to the marginal note, in 1927. Section 27c was inserted in 1968, amended in 1974 and then again in 1984, and section 27d was first inserted in 1968 and amended in 1974. So, they have had a long history. They are provisions with which the legal profession and the staff of the Commissioner are familiar, and I am not sure why they should now be sought to be totally revamped. I would like the Minister, at the stage of the reply or in Committee, to endeavour to give me some indication of the difficulties the Commissioner sees in working with the present sections, and the additional power which might be proposed in the new sections which clause 6 seeks to substitute.

It is interesting to note that there is no recognition of legal professional privilege in the new sections. That is a question to which I have referred in a number of Bills which have come before us in the past two weeks, and is

an issue which has been highlighted by a reported agreement between the Law Council of Australia and the Federal Commissioner of Taxation in relation to the recognition of legal professional privilege and the way by which that will be substantiated. It is an issue at Federal level as much as at State level, because the Federal Commissioner quite obviously needs to gain access to documents and records in order to establish whether or not a transaction is a sham or, in fact, a scheme designed to avoid or evade Federal income taxation. It would be quite unreasonable for legal professional privilege to be the veil behind which errant taxpayers hid to avoid or evade their Federal tax responsibilities.

Nevertheless, there is an area there which might be described as a grey area, where advice may have been given by a legal practitioner in anticipation of legal proceedings or in the course of legal proceedings, which could properly be subject to the claim of legal professional privilege. That would mean that they are not available for scrutiny. My understanding of the Federal agreement between the Federal Commissioner of Taxation and the Law Council of Australia is that legal professional privilege will be recognised but it will be established by a review of the Federal Court.

My understanding is that, if legal professional privilege is claimed, the Federal Commissioner of Taxation will not view the documents but will identify them. They will be delivered to the court and, if proceedings are instituted to establish legal professional privilege and a right to that privilege within a certain time, then the documents are not viewed until the court has decided whether or not that privilege ought to be granted. There is no provision in this Bill dealing with that complex issue, and it seems to me appropriate that it be addressed. What I would like the Minister to do during the Committee stage, if not before, is to identify the ways by which the State Commissioner of Taxes believes that legal professional privilege can be recognised and can be accommodated in light of the Federal Commissioner of Taxation's agreement with the Law Council of Australia. I would suggest that sets a good precedent.

The other issue which does not seem to have been picked up in this clause of the Bill is the question of self-incrimination. A number of Bills come before us with powers of inspectors, and now, in most of them at least, we are seeing that self-incrimination is recognised as a basis on which answers may not be required or documents may not be produced. However, on my reading of this clause 6, it does not appear that that is addressed. I think it ought to be addressed in the context of the Bill.

The other issue to which I draw attention and on which I think there ought to be some information provided relates to clause 4 of the Bill. There is a provision which says that the Commissioner shall not express an opinion in respect of an unexecuted instrument. I am worried about that, because in professional practice—whether as an accountant, land broker, land agent or legal practitioner—it is important to try to get some lead from the State Commissioner as to what might be the stamp duty implications of a particular transaction or document. It seems to me to be quite wrong that the Commissioner is not permitted by statute to give an opinion on an unexecuted document.

I can understand that that document may be only one of many documents in a series or in a transaction, so that one document alone may not be adequate to determine the colour of the transaction or the liability to State taxes or stamp duty. Surely, that can be overcome by the State Commissioner indicating that the opinion is either not binding but merely indicative, or that it is subject to the document being executed in that same form, and all facts which have been disclosed for the purpose of obtaining that opinion are the same as the facts which surround the execution of the document and the fulfilment of the transaction in the future.

So, I would express concern about that prohibition on the Commissioner. I would also raise the issue of practice directions or rulings. The Federal Commissioner of Taxation publishes income tax rulings for the guidance of the public, the various professions and commerce and industry. In some respects, they may not be in accordance with the law but they indicate the way the law will be administered as the Tax Commissioner sees it. There was some criticism of some tax office rulings recently, that they did not adequately reflect the law. So be it: that is another matter. But it would be helpful if the State Commissioner of Taxes were to publish from time to time rulings or practice directions or an indication of interpretation as to the way in which particular provisions in the Stamp Duties Act might be applied. That will assist the public and practitioners. I think that it will also help to alleviate unnecessary cost and expense, and it will be a satisfactory way of providing appropriate guidance to those who might be affected by stamp duty legislation.

Subject to those matters, I support the second reading of the Bill. It may be that some amendments are necessary in the Committee stage, but that will of course depend upon the responses which I receive either in the reply or as soon as we go into Committee. As I indicated, my colleague the Hon. Legh Davis will address the other major issues in this Bill.

**The Hon. L.H. DAVIS:** I support the comments of my colleague, the Hon. Trevor Griffin, and will speak briefly to this Bill. We see regular amendments to the Stamp Duties Act necessitated by loopholes which may arise as practices change in the commercial area and, also, as we see developments occur which force Governments to reassess the situation because they have seen a loss of stamp duty or perhaps, in some cases, a loss of a competitive position for Australian insurance companies because they pay stamp duty which increasingly does not have to be paid by overseas competitors.

The Bill addresses a number of concerns, the first being that within the insurance industry insurance companies have, for many years, agreed to deduct the premiums returned to policy holders from the total premiums received; in other words, if a policy is cancelled the policy holder is entitled to receive that portion of the premium unexpended for the period. However, that adjustment is restricted to repayments made within the calendar year in which the premiums were originally paid.

Quite a good deal of work was apparently involved in identifying that particular year in which the premiums were paid. It simply did not justify the expense from a Government point of view and it has now been agreed, through this amendment, and with consultation with the Insurance Council of Australia, that they will allow for the deduction of all premiums irrespective of the year in which that part of the premium unexpended was returned to the policy holder who had cancelled. There can be little doubt about the wisdom of that amendment.

The next amendment related to a growing practice within insurance companies to sell investment products to clients who may hold insurance contracts with those companies. Of course, there are many investment products in the market today, many of which are offered by insurance companies and clients, understandably, will be encouraged by insurance groups to transfer funds between investment

accounts and insurance premium accounts. The legislation has been amended to provide for the transfer of funds between these two accounts, but the advice in the second reading explanation is that that is not going to be a loss to revenue.

Similarly, there has been an adjustment with respect to insurance for air and sea freight. There has been a growing practice in the international insurance market to remove insurance premiums on international marine insurance in relation to the holds of commercial vessels and international ocean and air freight. However, the Australian insurance industry at the moment retains insurance premiums on that type of insurance and the States of Australia have banded together with the support, quite clearly, of the Insurance Council of Australia, to remove that disadvantage currently suffered by Australian insurance companies. Therefore, it is in the interests of South Australian insurers that that amendment be supported.

Earlier this year the Legislative Council passed amendments which sought to acknowledge the fact that Australian marketable securities were dealt with on the London Stock Exchange and exemptions were given to allow the transfer and settlement by computer of these securities on the London Stock Exchange. That again was a system that had been adopted by all States of Australia. This gave State Governments the ability to collect stamp duty on share transfers on companies incorporated in South Australia. Apparently a difficulty has arisen and, to avoid double dipping, transfers into and out of the trustee which has been established for the transfer of securities on the London Stock Exchange (a company, Sepon Aust. Pty Ltd) are exempted from the payment of duty and duty will only become payable when the transfer of the interest between the seller and the buyer is effected.

Similarly, it is not uncommon for securities to be purchased by stockbrokers acting as a principal, that is, trading on their own account. The practice in the past has been for these securities bought by stockbrokers as a principal to be exempt from stamp duty for a period of two days. Again, after consultation between all States and Territories, it has been agreed to extend that two day period to 10 days. I am not quite sure of the precise reason for that, but it is something which has been agreed to.

It is perhaps just a recognition of the fact that a two day period is just far too short given that, with the increased sophistication of our capital markets and the nature of dealing these days on the stock markets, principal positions are perhaps now more commonly taken which will involve the stock being held as a principal for a longer period of time. One would imagine that is the reason for the extension of time from two days to 10 days, and I suspect that that is so. I believe that is also a reasonable amendment.

Similarly, there has been an extension of time in the case of purchasers of motor vehicles receiving a refund on stamp duty where they have purchased a vehicle and then changed their mind and sought to return it. Previously, if they had not returned the vehicle within seven days they were going to be obliged to pay stamp duty at the full rate which, of course, is quite a punitive amount these days. The amendment before us seeks to extend that period from seven days to a 30 day maximum period. Also, there is an adjustment for the definition of the value of new or second-hand motor vehicles to be declared at the time of applying for either registration or transfer of that vehicle.

Certainly, there can be some difficulty in determining what the market value of a motor vehicle is and I have no doubt that on occasions there is the possibility that the value of the vehicle may sometimes be understated to minimise the stamp duty payable. The Hon. Trevor Griffin has covered other matters which, as he has mentioned, may well occasion some amendment if the answers are not satisfactory during the Committee stage. Apart from those matters raised by the Hon. Trevor Griffin I indicate that the Opposition supports the amendments.

Bill read a second time.

In Committee.

Clause 1 passed.

Progress reported; Committee to sit again.

## OCCUPATIONAL HEALTH, SAFETY AND WELFARE BILL

In Committee.

(Continued from 25 November. Page 2231.)

Clause 4—'Interpretation.'

**The CHAIRPERSON:** When we last sat we were considering clause 4. The next amendment, to line 39, has been put on file by both the Hon. Mr Griffin and the Hon. Mr Gilfillan.

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

Page 4, line 39—Leave out 'workers' and insert 'people'.

This amendment is consequential.

Amendment carried.

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

Page 4—
Line 44—Leave out '$20 000' and insert '$10 000'.
Line 45—Leave out '$15 000' and insert '$7 500'.
Page 5—
Line 1—Leave out '$10 000' and insert '$5 000'.
Line 2—Leave out '$5 000' and insert '$2 500'.
Line 42—Leave out '$100 000' and insert '$50 000'.
Line 43—Leave out '$50 000' and insert '$25 000'.

The amendment relates to subclause (5), which deals with penalties. Ever since the Minister in another place introduced the discussion about occupational health he has been bandying about the whole concept of tough penalties and using that as a bludgeon in the discussion on this issue and creating a confrontationist setting rather than a cooperative setting for resolution of issues relating to occupational health, safety and welfare.

It seems to me that that sort of approach up front is quite inappropriate. There needs to be a cooperative effort between employers and employees in the workplace to ensure that it is safe. It is not in the interests of the employer that the workplace be unsafe. It is in the interests of the employer that there be a safe working environment, that employees feel that their working environment is safe and healthy and that they can be reasonably comfortable in the knowledge that, barring an accident as such, their time in the workplace will be directed towards gainful employment and productivity rather than worrying about health and safety matters.

It is not in the interests either of the employees that they themselves be subject to heavy penalties. The emphasis in this Bill is on heavy penalties on employers. The Liberal Party's position expressed by the shadow Minister in another place (Mr Baker), and again by me on second reading, is that we do not believe in using the bludgeon. we believe in education and cooperation between employers and employees, and that will set the right climate for focusing on occupational health, safety and welfare matters.

Confrontationist positions alienate rather than encourage. The penalties of up to $100 000 are quite serious. In fact, I would put them in the draconian class and the ultimate sanction of imprisonment of five years is certainly very heavy handed. We do not disagree with the need to increase

substantially the penalties in the present legislation. However, we say that this Bill ought to have the penalties reduced by half. My amendment is designed to achieve that objective, reducing the $100 000 maximum fine to $50 000; the $50 000 fine for Division 2 to $25 000; Division 3 to $10 000; Division 4 to $7 500; Division 5 to $5 000; and Division 6 back to $2 500. Those changes would give a more appropriate complexion in the Bill than the Government's proposals.

**The Hon. I. GILFILLAN:** We are opposed to the amendments as they are presented *in toto*. It is unique to hear the Hon. Mr Griffin moving for a reduction in penalties. I am more accustomed to hearing the reverse apply and, in that context, I give serious attention to his argument. In a later amendment we will be arguing for penalties for employees and safety representatives. It is apparent that those who are on either side of this situation feel somewhat discomforted by the threat of substantial and realistic penalties. They are maximums, and we are dealing with people's lives, so the penalties listed in the Bill are appropriate in the context in which they are placed.

**The Hon. C.J. SUMNER:** The Government opposes the amendment. The object of the honourable member's amendment is to cut the penalties in half. This ought to be resisted by the Committee. The current maximum penalties are totally derisory: $1 000 for employers and $25 for workers.

It is interesting to note that, when the Radiation Protection and Control Act 1982 was introduced by the former Minister of Health Mrs Adamson (now Ms Cashmore), a person convicted for an offence under that Act was to be guilty of a minor indictable offence with a penalty not exceeding $50 000 or imprisonment for a term not exceeding five years, or both. I would have thought that that was a fairly substantial penalty under legislation introduced by the then Liberal Government some four years ago.

It is also interesting to note that Mrs Adamson (as she was then) said that she thought that it would be a great deterrent to put the chairman of directors of a company in prison, and she also said:

> Imprisonment is fairly effective, wouldn't you say?

To some extent the Radiation Protection and Control Act dealt with worker safety and, similarly, this legislation deals with worker safety. Apparently, Liberal members are quite happy to have very tough penalties in the Radiation Protection and Control Act but seem to not want them in this legislation. I fully accept that there must be a cooperative approach in the workplace. I am sure that the Government accepts that and I am sure that the trade union movement accepts that. However, that does not mean that people's lives should be put at risk by unsafe working practices.

**The Hon. K.T. GRIFFIN:** The Hon. Mr Gilfillan has tried to draw some analogy between this Bill and the criminal law. It bears no relation to that. The Attorney-General has tried to draw an analogy between radiation protection and control legislation and this Bill. This Bill purports to set up a scheme whereby employers and employees are to work together to ensure appropriate health, safety and welfare in the working environment. In my view, that should be the emphasis of the Bill. It is not about the criminal law; and it is not about the setting of the sorts of standards which are fixed in radiation protection and control legislation.

As I recollect, the radiation protection and control legislation does not set up the same sort of safety and health committees, training processes and other emphases which are set out in this Bill. There is a clear distinction between the three areas: the criminal area deals with criminal behaviour; radiation protection and control deals with radiation measures; and this Bill deals with a scheme or model designed to focus on cooperation in the workplace between employers and employees in setting appropriate standards and making sure that, according to the amendment we moved yesterday, the general well-being of both employers and employees is a focus of attention in the workplace.

I do not accept the analogies which the Hon. Mr Gilfillan and the Attorney-General have sought to draw, because there are very clear and important distinctions between the three areas. I still say that the bludgeon of heavy penalties as proposed in this subclause are inappropriate to the proper implementation of the spirit of the Bill. However, because the Hon. Mr Gilfillan has indicated that he supports the Government and will oppose my amendment, it is not an issue where it is appropriate for me to call a division.

Amendments negatived; clause as amended passed.

Clause 5—'Application of Act.'

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

> Page 5, line 7—Leave out 'workers' twice occurring and substitute, in each case, 'employees'.

This is consequential on the earlier decision to change 'workers' to 'employees'.

Amendment carried.

**The Hon. K.T. GRIFFIN:** This clause, among other things, deals with regulations made in relation to work on a South Australian ship, whether or not the ship is within the coastal waters of the State. Can the Attorney-General indicate what regulations, if any, are likely to be proposed under subclause (2)?

**The Hon. C.J. SUMNER:** There are no current proposals.

**The Hon. K.T. GRIFFIN:** Are there any current proposals for any regulations in relation to subclause (1)?

**The Hon. C.J. SUMNER:** Not at the present time.

Clause as amended passed.

Clause 6—'Non-derogation.'

**The Hon. K.T. GRIFFIN:** There are several issues involved here: first, equal opportunity matters; and secondly, the question of standards of care, civil rights and remedies. I think it is appropriate if we deal first with the Equal Opportunity Act, which I think is relevant to the first amendment.

**The CHAIRPERSON:** I suggest that all the proposed amendments to this clause be canvassed at the same time.

**The Hon. K.T. GRIFFIN:** I will defer to my colleague the Hon. Diana Laidlaw in relation to her amendment which I believe deals more appropriately with the issue than the amendment which I initially prepared and placed on file. During the second reading debate I said that there are problems of conflict between the operation of the Equal Opportunity Act and the Codes of Practice in particular which might be prescribed under this Bill and which already exist under the current Act.

It was in an attempt to resolve the conflict that I first put my amendment on file. I did that also because there were steps being taken at the Federal level to address that conflict. It is unsatisfactory that any person in the community should be faced with conflicting obligations under the law so that the honouring of one obligation will put that person in breach of another law or vice versa. That is a highly unsatisfactory state for the law to be in and every attempt ought to be made by legislators, in particular, to ensure that that sort of conflict does not occur.

In fact, there are conflicts between the Equal Opportunity Act and certain State awards and codes of practice under the current Act. It is important that we address that issue and find ways to resolve it. I drew attention to the difficulty which the regulation prescribed by the Government creates for persons who work in a lead contaminated environment.

On the one hand the regulation provides that women should not work in that environment: on the other hand the Equal Opportunity Act requires that, if women so wish, they should be free to work in that environment.

**The Hon. Carolyn Pickles:** Men need to be very careful working in that environment also.

**The Hon. K.T. GRIFFIN:** Of course they do; I do not disagree with that. Men need to be careful, but there is a special danger for women working in a lead contaminated environment.

**The Hon. Carolyn Pickles:** Only when they are pregnant.

**The Hon. K.T. GRIFFIN:** Lead remains in the bloodstream for something like 10 months. We all know that the gestation period is nine months, so it is an impossible siuation for employers who have a woman employee of child-bearing age in a lead contaminated environment; that woman may not be pregnant but may become pregnant. The rate at which lead dissipates from the bloodstream is longer than the gestation period. That is the problem. I know it has been addressed and it has been a source of disputation but what I am pointing out is that there is a legal problem for the employer which has to be resolved.

My colleague the Hon. Diana Laidlaw has already addressed the issue at the Federal level and I am sure she will relate that again, but what I want to say is that there are those conflicts and it is unreasonable for the Parliament or the Government in the promulgation of its regulations, in the enacting of laws, to have a situation where there is that conflict where the employer cannot win either way. The Hon. Diana Laidlaw's amendments will I think address the issue within a reasonable time frame and will ensure that attention is focused on that issue by the Occupational Health and Safety Commission and that in the intervening period there are no conflicts which create that dilemma for employers.

It is interesting to note that in today's *Advertiser* on this very issue there is a short article in relation to a code of practice on industrial radiation protection to be published by the International Labour Organisation. That article states:

> Employers should take special measures to safeguard expectant mothers against possible radiation hazards at work . . . That code—approved last week by the ILO's executive—says pregnant women need to be protected against substantial irregularities in the radiation dose rate because a foetus is particularly vulnerable to the risk of severe mental retardation between the eighth and fifteenth week.

That is really pertinent to the issue which I address and ought to be considered in the same context as the amendments to this clause. We support equal opportunity; we support the Act; but the conflict needs to be addressed. As I say, that has been acknowledged at the Federal level. When the Hon. Diana Laidlaw moves her amendment I will support it because I think it is a reasonable way of overcoming the problem.

**The Hon. DIANA LAIDLAW:** I move:

Page 5—

Line 15—Leave out 'The' and insert 'Subject to subsection (1a), the'.

After line 16—Insert new subclauses as follows:

(1a) In the event of an inconsistency between this Act or a code of practice under this Act and the Equal Opportunity Act 1984, this Act (or the code of practice) prevails.

(1b) Subsection (1a) expires on the second anniversary of the commencement of this Act.

As the Hon. Mr Griffin indicated, South Australia's Equal Opportunity Act, the Federal Sex Discrimination Act, award restrictions and regulations under the Occupational Health and Safety Act certainly give rise to confusion and uncertainty in the workplace. In many cases there are very real concerns which are a daily fact of life for management because of employers' liability for accidents and injuries that are related to the workplace and particularly arising from their other responsibilities in terms of the rising rate of workers compensation premiums which have been encountered in recent years.

I want to initially focus on women's employment. There are hosts of Federal and State awards, in addition to legislative prescriptions, which restrict employment in certain categories of occupation and certain environments, for instance, women working underground, operating certain types of machinery, working shifts and lifting weights. Originally many of these restrictive provisions were introduced to protect women from very real hazards in the workplace; they also grew out of entrenched attitudes to the role of women which today are no longer acceptable. These provisions need to be re-examined in the light of updated occupational health and safety policies and anti-discrimination legislation.

Federal and State Governments have a leadership role and a responsibility in this area. After all, State and Federal Governments require the private and public sectors (by way of equal opportunity legislation, sex discrimination legislation and affirmative action legislation) to pursue major reviews and often major overhauls of their practices and procedures to ensure that women are not discouraged or denied opportunities to a range of jobs. In the case of the Sex Discrimination Act this requirement extends to the physically impaired. However, there are clearly areas in our legislative and award systems which go beyond the influence of individual employers.

In all fairness, I believe that Governments—and we in this place who are all advocates of equal opportunity—have a responsibility to match the requirements we make of the private sector with vigorous efforts to remove anomalies where they exist between employers' obligations to create a safe working environment with their obligations that we insist upon in terms of equal opportunity practices. The Federal Government recognised this responsibility and also the fact that there were anomalies that could not be removed overnight or by a mere wave of a wand when it introduced in the past the Sex Discrimination Act 1984. That Act specifically included section 40, which provided a number of exemptions from the provisions of that Act. Section 40 (1) provides:

> Nothing in division 1 or 2 affects anything done by a person in direct compliance with—
>
> *(a)* any other Act, any State Act, or any law of a Territory, in force at the commencement of this Act;
>
> *(b)* a regulation, rule, by-law, determination or direction in force at the commencement of this Act made under an Act, State Act or law of a Territory;

Subsection (2) provides:

> Except in relation to the operation of the *Social Security Act 1947*—

and four other Acts—

> paragraphs (1) *(a)* and *(b)* shall . . . cease to be in force at the expiration of 2 years after the commencement of this Act.

That section recognised that there were inconsistencies between that Federal Act and Federal awards and provided for two years in which there could be an exemption from the Federal Act while the procedures, in terms of regulations and awards, were amended to remove those inconsistencies.

In relation to the exemptions that I have just noted in section 40, the two year period, which was to expire in August 1986, was extended by one year by the Prime Minister to August 1987 because progress in removing these inconsistencies had not been as swift as everybody desired. The Prime Minister referred to this extension when speaking to a conference on women's employment which the Federal Government convened on 17 October this year. I quote from his statement at that conference:

In August 1986 we reviewed that exemption. Due to the limited progress made . . . we decided to extend the exemption for a further twelve months to 1 August 1987.

I would like to make it clear today, however, that our Government stands firm in its view that State and Territory Governments should take urgent action to remove discriminatory provisions in their own legislation [and in awards]. To that end, further exemptions beyond 1 August 1987 will not be considered unless there is clear and substantial justification on health and safety grounds.

The Prime Minister again recognised that, in terms of equal opportunity, health and safety grounds just have to be considered as being of paramount importance.

I note in passing that these problems of inconsistency in an employer's requirements in the workplace, which have been acknowledged by the Federal Government and which are identified and addressed in amendments by the Hon. Trevor Griffin and the Hon. Ian Gilfillan, were in fact not a problem until earlier this year because the South Australian Sex Discrimination Act 1975 contained an exemption in section 35. The blanket exemption contained in that old Sex Discrimination Act is not something I support or would have wished to see in the Equal Opportunity Act.

In fact, the difficulty that arises now is due to the fact that the Equal Opportunity Act is silent on this matter of inconsistencies. We are told by the Government and those responsible for administering the legislation that this silence reflects the compatibility between proper modern occupational health and safety practices and the practice of equal opportunity. I, and all my colleagues, support the principle that there is compatibility between the two areas, but we recognise the fact that in practice the compatibility does not exist at present until these inconsistencies have been removed.

In relation to these inconsistencies, we are told, also, that they do not exist because of a legal precedent that a later Act—in this case the Equal Opportunity Act—overrides all previous Acts. This may be so and the implication may be understood by those who have a sound knowledge of the legal system, but it is not appreciated out in the workplace, an environment which I recognise most would see as one which deals with practicalities.

To reinforce this uncertainty, I refer to material produced by Mr Hedley Bachmann, Director of the Department of Labour in South Australia, in a report that he provided on behalf of the State to the conference on Legislation and Award Restrictions to Women's Employment, to which I referred earlier. He notes throughout in reference to the Equal Opportunity Act that it effectively invalidated several recommendations, impliedly repealed and also referred to the Act in terms of effective illegality. At all times the repeal and the illegality is qualified—it is not black and white. The Director of the Department of Labour qualifies his statements on each occasion that he makes them.

I also believe that it is worth noting, if one persists in using this legal precedent, that a later Act in fact overrides all other Acts, that with the passage of this Occupational Health, Safety and Welfare Bill that precedent and status that has supposedly been enjoyed by equal opportunity will in fact be lost. I argue that, in terms of a further amendment that I understand that the Hon. Ian Gilfillan will move to remove from clause 6 (1) the words 'and do not derogate from', that amendment would certainly ensure that equal opportunity did not rank with an equal status, let alone the supreme status that some would argue it now enjoys.

I make the point that the identical amendments moved earlier by the Hon. Trevor Griffin and the Hon. Ian Gilfillan had merit because they addressed this issue of inconsistency, but I had difficulty with them because I saw that they were far too open ended. I found that unacceptable and, when I spoke to my colleagues, they recognised the difficulties that I was highlighting. I am very pleased that they were prepared to work with me in finding an amendment which accommodated my concerns but which respected the practicalities in the workplace.

The amendment relates only to standards of care in the workplace and to codes of practice, and any other instances of discrimination not related to standards of care or codes of practice would not be condoned, and the Equal Opportunity Act would apply in full force in those matters. I have also proposed that there be a time limit. I believe that is important, because a short time has been recommended. Within that time and, hopefully, before the time designated, I believe that all parties could work constructively to get rid of restrictive practices in awards, agreements and regulations so that there is compatibility between the responsibilities of the employers to pursue equal opportunity practices but also their obligations under occupational health and safety. That compatibility is something that I believe all of us in this Parliament wish to see.

Also in terms of the time limit, it incorporates an obligation for all parties to work together. It recognises that a great amount of work has been undertaken by the State and Federal Governments, by key employer groups in the ACTU and the United Trades and Labor Council in recent years to eradicate these restrictive work practices or to update conditions in line with modern occupational health standards and equal opportunity requirements.

Finally I believe that this is a very important amendment, which has certainly been the focus of media attention. I think it has to be explained so that the Government, at least, recognises the enormous problem which is facing the work force but which it has persisted in ignoring until this time. In relation to establishing the date of two anniversaries after the proclamation of the Act, I have been guided by the communique issued at the conclusion of that Federal conference in October by the ACTU and the Confederation of Australian Industry which indicated that they would aim by 1988, at the latest, to have got rid of these inconsistencies. I believe that, as we rely on those key employer and employee bodies to fulfil our objectives in getting rid of these inconsistencies we, too, should be guided by what they believe is possible in this field.

I also give notice that I will be moving a complementary amendment to the functions of the commission at clause 15. That, again, insists that the commission, in drawing up codes of practice, take account of the Equal Opportunity Act, and I believe that is an important amendment to move, to insist that these codes of practice, in being developed, take account of the problems I have highlighted today. When these codes of practice are in place, there will be no inconsistency between the two areas and there will be no difficulty arising from the amendments.

**The Hon. I. GILFILLAN:** I do not intend to move either of my amendments. I have shared the concerns of both the Hon. Trevor Griffin and the Hon. Diana Laidlaw. Our recognition that health and safety in the workplace is a very important and probably paramount issue, in almost any context, motivated us to look intently at the effect of clause 6 (1). I pause to ponder somewhat bemusedly the wording of subclause (1) and to express somewhat plaintively how baffled I am as an innocent politician that this particular verbiage is required. This seems to be so unfair, that the last cab off the rank is the best one; so, the game is to see who can get the last Act that will supersede all its antecedents. Anyway, this is not the place to debate that extraordinary phenomenon in the way we interpret our legislation.

*The Hon. C.J. Sumner interjecting:*

**The Hon. I. GILFILLAN:** I reckon face to face. Talk about discrimination! There is discrimination on old legislation. Once again, I do not want to be diverted into that because I realise the value of the time in this debate. We have spent a lot of time on this, and I went to great pains to ensure that the Equal Opportunity Act was an effective vehicle to destroy as much as possible discrimination against people in whichever field they found themselves.

Section 71 (2) specifically deals with the question of physical impairment. I just refer it into *Hansard* and do not intend to read it; I am sure members are familiar with it. I intend not to move either of my amendments and, although I do not want to open myself up to a whole barrage of persuasion, I will oppose the amendments of the Hon. Diana Laidlaw. In doing so, I would like to compliment her.

*The Hon. Diana Laidlaw interjecting:*

**The Hon. I. GILFILLAN:** I would like to make some comments—and they are unsolicited—and I will not be deterred by anyone who is thin skinned about compliments. I think that the persistence she showed in tracking down where there were anomalies was an admirable exercise, but I have no confidence that there will be an effective follow-up, and this sort of time span and those qualifications make even more murky a situation from which, frankly, I have backed away.

I think, therefore, that the interpretation of those clauses in the Bill, as given to me, is reasonable. I am sorry about the circumstances that mean that it is essential, apparently, to be there. Section 71 of the Equal Opportunity Act and other explanations I have had from the Commissioner for Equal Opportunity, Jo Tiddy, and others who have been good enough to help me come to a clear understanding on this matter, leave me in the position I have just outlined. I will not proceed with my amendments and I intend to oppose the amendment of the Hon. Diana Laidlaw.

**The Hon. DIANA LAIDLAW:** I have moved my amendments on the understanding that the Democrats had done some research in the field and had come up with an amendment which recognised a genuine problem in the community—and, particularly, in the workplace. That amendment stated that equal opportunity was to take second place to occupational health and safety. As I said, I did not accept that amendment; I was not comfortable with it. I tried to assist the Democrats in presenting what was a more practical amendment in accommodating what I believed was actually their goal, and also—

*The Hon. I. Gilfillan interjecting:*

**The Hon. DIANA LAIDLAW:** They were identical amendments, and if the honourable member accuses my colleagues, the same accusation rests on his shoulders. The Hon. Mr Gilfillan has now gone from one position where he had equal opportunities subservient to occupational health and safety and has done a 180 degrees flip on the basis that he does not understand.

*Members interjecting:*

**The CHAIRPERSON:** Order!

**The Hon. DIANA LAIDLAW:** I do not want to say too much more because I do not want to hold up this debate. However, that is an extraordinary position for a member of Parliament of some long standing to take. Perhaps John Cornwall could well accuse the Hon. Mr Gilfillan of being on a sharp learning curve as well. I find it extremely difficult to see the reason for this 180 degrees flip when this Bill is about occupational health and safety, and that is what we should be addressing—the safety of people in the workplace. I rest my case with extraordinary disappointment.

**The Hon. C.J. SUMNER:** Needless to say, the Government opposes the Hon. Mr Gilfillan's foreshadowed amendment—

**The CHAIRPERSON:** He is not moving it.

**The Hon. C.J. SUMNER:** I said that he wasn't, but we oppose it anyway. I want to indicate to the Parliament that he was thinking of introducing legislation that would have derogated from the provisions of the equal opportunities legislation. The Hon. Mr Gilfillan put an amendment on file to that effect, Madam Chair. I am just indicating that had he moved the amendments he had foreshadowed which he has now finally decided not to move it would have meant that the equal opportunities legislation did not apply to this legislation, and the Government would not have supported it. I did not want any misunderstanding about that. Furthermore, we would not support the Hon. Mr Griffin's amendment, and that was to remove completely the equal—

**The Hon. K.T. Griffin:** It was in the same terms—

**The Hon. C.J. SUMNER:** It was the same as the Hon. Mr Gilfillan's amendments, and was to remove completely the equal opportunities legislation from any role in the occupational health legislation. The Hon. Miss Laidlaw had a compromise motion which we also oppose because we feel that the matter can be dealt with under the existing law. The Hon. Mr Griffin's amendment would enable regulations and codes of practice to be released which were discriminatory for no properly based reason. The Equal Opportunities Act allows regulations and codes of practice to be promulgated which differentiate between the sexes, provided that the differentiation is based on objective grounds. The honourable member referred to the risks to pregnant women. My colleagues who are more experienced in these matters have told me that radiation has an equal effect on the male gametes as on the female gametes.

**The CHAIRPERSON:** Greater.

**The Hon. C.J. SUMNER:** I am again prompted, now from the Chair; not only by my colleagues on the backbench. My colleague in the Chair should know something about it because she was a tutor in one of these physiological—

**The Hon. K.T. Griffin:** Psychological.

**The Hon. C.J. SUMNER:** Not psychological—or biological disciplines at the university, I understand. I am sure she knows all about it. In any event, by interjection she indicates that there is an equal, if not a worse threat to male gametes from radiation compared to females. I am not sure whether or not that applies to lead, but that is another issue. The fact is that in the situation outlined by the honourable member, if there is objective evidence for the discrimination then that can be permitted by exemptions under the equal opportunities legislation. A further reason why the amendments foreshadowed by the Hon. Mr Gilfillan, the Hon. Mr Griffin's amendment and the Hon. Miss Laidlaw's amendment were really not practical is that the Federal Sex Discrimination Act will come into operation in this area in any event in August 1987.

**The Hon. Diana Laidlaw:** Hawke promised it in August this year—

**The Hon. C.J. SUMNER:** That is all very well. You are here trying to put it off for two years when the Federal legislation would override any inconsistent occupational health and safety legislation in the States by August of next year.

**The Hon. Diana Laidlaw:** I have just taken account of that fact.

**The Hon. C.J. SUMNER:** I do not know why you moved it in that case. You could not convince your caucus, that is

the problem. I know all about that—women in the caucus. You have a bit of trouble from time to time.

**The Hon. Diana Laidlaw:** You might feel comfortable with that position, but it is not true.

**The Hon. C.J. SUMNER:** The Government was not inclined to support any of the amendments which would have derogated from equal opportunities laws in this State.

**The Hon. I. GILFILLAN:** I am prompted briefly to make a couple of other observations which I think may not be necessary, but I feel I would like to make these points. The equal opportunities legislation has a firm intention of correcting gross injustices in our society and it should have a very prominent role in legislation. Therefore, there is good reason to see that it is not ignored in any legislation anywhere. I believe that the occupational health and safety legislation has an overriding importance as far as an individual goes. There must be no reason why a person is put into a situation of danger to health or safety because of some pedantry as to whether A and B must have exactly the same treatment.

In relation to this so-called lack of research, I have had hours of discussion with people with vital interest and knowledge of it (and I include Commissioner Tiddy whom I would expect to be less than ignorant on this matter). There is no incident of concern to me that would not be covered by the normal provisions of section 71 of the Equal Opportunities Act where physical impairment is specifically outlined. Individual situations where this may occur can and quite properly should be dealt with. The Commissioner's major concern, and I can see it, is that generic situations will arise which act as excuses for discrimination, and I can understand that that is a problem.

I think that there are some deficiencies in the argument of the debate to date and certainly the Attorney does not seem to have been able to address himself to it either. The equal opportunities legislation not only deals with discrimination between sexes but deals with discrimination of disabled and people with chronic conditions of diabetes or epilepsy. I persevered with my inquiries about those conditions and found, to my satisfaction, that if there were certain job situations which would put those people either at extra risk to themselves or expose others to risk that that would be dealt with in the normal give and take of an arrangement by the current legislation and the equal opportunities legislation would not override and create a dangerous situation.

I consider that to be satisfactory for my requirements to eliminate the very real concern that I felt about people in the workplace being exposed to dangerous situations. That is the only motive that prompted me, in the first instance, to indicate that I would move the amendments. I have since withdrawn those amendments and the Attorney, who occasionally wallows when he feels he is exalting in someone else's embarrassment, failed to remember that I said that quite plainly. I would like him at least (and I do not expect this of the Hon. Miss Laidlaw) to give me credit for having thought the thing through and reached a satisfactory situation.

I waited in vain for that, and I guess I will continue to wait in vain for it. The other aspect in regard to clause 6 (1) is that it is not only the Equal Opportunity Act—other Acts are involved and, in considering future legislation, it is important that members realise that it will be superseding previous legislation. We should consider whether there ought to be more provisions such as clause 6 (1) involved so that we give previous legislation a fair go.

**The Hon. DIANA LAIDLAW:** I rise for the last time. I look forward to reading *Hansard* tomorrow and refreshing myself on the remarks just made by the Hon. Mr Gilfillan because it would certainly be my view that he spoke strongly in favour of the amendment which I moved and which he strongly rejected.

Amendments negatived.

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

Page 5, lines 17 to 19—Leave out subclause (2) and insert new subclauses as follows:

(2) Subject to subsection (3), the provisions of this Act do not limit or derogate from any civil right or remedy.

(3) Where, in respect of a matter relating to the health or safety of another, a person—

*(a)* complies with the standards of care required by this Act in respect of occupational health and safety;

or

*(b)* acts in accordance with a recommendation of the Commission or a direction of an inspector in relation to that matter,

the person who is indemnified by the Crown gainst any common law claim that may be made by that other person in relation to the matter for breach of any duty of care.

My amendment is designed to focus attention on the codes of practice and the standards that might be promulgated by regulation. Subclause (2) provides:

The provisions of this Act do not limit or derogate from any civil right or remedy and compliance with this Act does not necessarily indicate that a common law duty of care has been satisfied.

That really means that, even though there might be some fairly heavy burdens placed upon an employer by the regulations or the codes of practice, it has no relationship to any civil liability. It seems to me that that needs to be clarified, and the amendment seeks to do that. It is in a different form from the amendment moved in another place but, subject to subsection (3), the provisions of the Act, according to my amendment do not limit or derogate from any civil right or remedy.

As set out in the amendment, it is important that if an inspector gives a direction which of course is required to be complied with unless the various review procedures are entered into and proceeded with, even though they may result in some liability arising, the Crown and the inspector have no responsibility for that liability. It seems to me to be appropriate that we ensure that both the commission and the inspectors—ultimately the Government—put their money where their mouth is and, where these sorts of standards are to be imposed and directions given or recommendations made, and there is a requirement to comply with them, that in fact satisfies the standard of care so far as the employer is concerned.

That does not mean that the injured or affected employee is without a remedy. There is still that right of action but the Crown ultimately carries a responsibility financially for the consequences of its action. It seems to me to be perfectly reasonable that that occur.

**The Hon. C.J. SUMNER:** The Government cannot support the amendment. I do not know of any similar situation where there is written into a statute the Crown indemnity for, in effect, the wrong advice of a Crown officer. There are circumstances in which the wrong advice or the negligent advice of a Crown officer can lead to claims by a damaged person—a person who suffers damages—against the Government, and that has occurred. But that is done in accordance with the general laws of negligence. The Kangaroo Island soldier settler case was one instance where the Government was sued because of damage which flowed from action taken as a result of advice from officers in the Department of Agriculture. Cases have been mounted in the local government area where people who have suffered damages as a result of building construction have sued local government building inspectors in some circumstances. The

factual question is whether there is negligence and I understand that the Kangaroo Island farmer ended up losing.

**The Hon. K.T. Griffin:** I was talking about council building inspectors.

**The Hon. C.J. SUMNER:** My point is that those sorts of claims can currently be made under existing law. We should not, for what would be the first time, insert a specific right that, irrespective of negligence or otherwise of the inspectors or the Government, the Crown ought to indemnify an employer. If there was compliance with the code of practice, the chance that an employer could be successfuly sued for damages would be very remote. I cannot envisage circumstances in which it might occur unless the court determined that the code of practice laid down by the Government was insufficient. I suppose that that is conceivable, but it should be realised that the codes of practice are minimum standards that are being set. This provision does not exist elsewhere in the law and I do not think it is appropriate here. If a Government official has been negligent, it ought to be left to the normal rules of common law.

**The Hon. K.T. GRIFFIN:** The farmers case was more a question of negligence arising out of the advice upon which the farmers relied. The actions against local government bodies for approval of plans and specifications related to the compliance by the property owner with the plans which had been approved by the local government body—the approval being in the context of saying that they were appropriate for the building site on which the building was to be erected and that proving not to be the case. So there was a relationship there which obviously does not exist in the area of inspectors or the commission saying that this is the appropriate standard of care and that it shall be complied with and, as a result, some loss, damage or injury occurs following compliance with those standards or that direction.

I suggest that that is not so much negligence as a mandatory statutory requirement on an employer to comply with the directions of the commission or inspectors. That is the context in which this is made. I think there are other statutes where the Crown in some circumstances gives an indemnity. I have not had the time to do any research on this. Even if it were novel, surely the law is not so much in a straitjacket that we should not consider the consequences of employers complying with these sorts of directions by inspectors. A provision in the Bill states that any liability which accrues to a member of the commission acting in good faith in the exercise or purported exercise or discharge of their duties is a liability which is to be borne by the Crown. However, in my view that is a different matter. I think this is a proposition that is worth including, and it is worth considering. It really makes the commission and inspectors as accountable as the employers.

**The Hon. I. GILFILLAN:** We oppose the amendment. I understood that the Kangaroo Island case actually was sustained.

**The Hon. K.T. Griffin:** No.

**The Hon. I. GILFILLAN:** I do not recollect it being overthrown in the High Court.

**The Hon. K.T. GRIFFIN:** It was overruled in the High Court. The Full Court of the South Australian Supreme Court judgment was overruled. In the light of the Hon. Mr Gilfillan's indication, even though I believe that this is an appropriate amendment, if I do not succeed on the voices, I can see the numbers on the floor and will not call a division.

Amendment negatived; clause passed.

Clause 7 passed.

Clause 8—'Membership of the commission.'

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

Page 5, line 40—Leave out '10' and insert '9'.

I have a series of amendments relating to the composition of the commission: some are related and some are not. This amendment deals with the number of members who may be on the commission. Presently the Bill provides for 10 members. One is to be a full-time member who is to be a person nominated by the Minister after consultation with employer associations and the United Trades and Labour Council; one is the Director of the Department of Labour; one is the Chairman of the Health Commission; three are nominated by the Minister after consultation with employer groups; three are nominated by the Minister after consultation with the UTLC; and one shall be a person who is experienced in the field of occupational health, safety and welfare and nominated by the Minister after consultation with employer groups and the UTLC.

I think the membership of the commission is too much in favour of the Government and the trade union movement. The reduction in the membership from 10 to nine members will help to dilute that impact. More particularly, a subsequent amendment that I will move seeks to ensure that all members of the commission are to have knowledge of and experience in occupational health, safety and welfare. There is no point in putting people on this commission if they do not have some knowledge of and experience in occupational health, safety and welfare matters.

Later I will move an amendment to ensure that that criterion is considered in making nominations. Therefore, I believe that the person who can be appropriately removed is the person who is to be experienced in the field of occupational health and safety. That will be followed up later with proposed amendments to allow the commission to obtain on a consultancy basis or an employment basis that specialist advice. The requirement that other members of the commission should have knowledge and experience of occupational health, safety and welfare compensates more than adequately for the removal of the person referred to in paragraph *(f)*.

So I see value in reducing the size of the commission to make it a more effective body and also to ensure that the employer representation is not unduly diluted as it is presently with the full complement of 10 members. As I say, a reduction by one will dilute that disproportionate representation, but it does not overcome it completely and achieve full balance between employers and employees, Government and employers, and Government and employees. Nevertheless, it is a move in the right direction.

**The Hon. C.J. SUMNER:** The Government does not accept the amendment. An expert in occupational health is considered to be an important member of the commission and, therefore, should remain. Other members, although likely to have experience in occupational health, safety and welfare matters, may not have expertise in some of the more technical areas. The inclusion of a person with such technical knowledge and skills would help ensure that a full depth of understanding is brought to the complex issues that the commission will be required to consider.

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

Amendment negatived.

*[Sitting suspended from 6 to 7.45 p.m.]*

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

Page 6—

Line 9—Leave out 'consultation with' and insert 'taking into account the recommendations of'.

Line 11—Leave out 'consultation with' and insert 'taking into account the recommendations of'.

Subclause (1) *(a)* provides for the appointment of a full-time member to be nominated by the Minister and, as presently drafted, it is after consultation with employer associations and the United Trades and Labour Council. What I am proposing is that the subclause be toughened up a bit so that the Minister is required to take into account the recommendations of employer associations and the United Trades and Labour Council. There is a difference between the two: 'consultation' means just talking with them; 'taking into account the recommendations of' is a much more positive enjoinder to the Minister. I prefer that in the context of this Bill. The word 'consultation' appears in paragraphs *(d)* and *(e)* and the argument in respect of those two identical amendments is the same.

**The Hon. C.J. SUMNER:** The usual form of wording in these Bills is 'after consultation with', which is what the Government's proposal is, namely, that appointments be made after consultation with certain groups. I do not think there is a great deal in what the honourable member says. In practice 'consultation' means a very similar thing to what the honourable member is proposing but clearly the Minister must take responsibility for the appointments that he makes and he must do it in consultation with the relevant group. It is a formula that has been used in the past and I do not think it has caused any major problems.

As I said, ultimately a Minister or the Government must take political responsibility for the appointments that it makes. I suppose it is also worth pointing out that one does not know how one takes into account the recommendations of all the various employer organisations, for instance. So, I oppose the amendment.

**The Hon. M.J. ELLIOTT:** The amendment that Mr Gilfillan had on file is identical and I think it is following along the lines that I have been taking in connection with a number of Bills where I want the Ministers to have as much direction as is reasonable from the responsible bodies. Not only should the employers associations and the UTLC be consulted with, but the recommendations should be taken account of—which is a little stronger. We will therefore be supporting the amendment.

Amendment carried.

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

Page 6, line 13—Leave out 'workers' and insert 'employees'.

Amendment carried.

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

Page 6, after line 20—Insert new paragraph as follows:

*(aa)* the need for the Commission to consist of members who have extensive knowledge of and experience in occupational health, safety and welfare;.

The consequence of the fact that I was defeated on my amendment to the number of members of the commission is that I will no longer move to delete paragraph *(f)*. Subclause (2) provides that in making nominations the Minister shall have regard to the need for the commission to be sensitive to cultural diversity in the population of the State. That is to be the subject of an amendment by the Attorney-General. It also provides that the Minister shall have regard to the desirability of having reasonable representation of both men and women in the membership of the Commission.

It seems to me appropriate that we also require the Minister to have regard to the need for the commission to consist of members who have extensive knowledge of and experience in occupational health, safety and welfare.

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

Page 6, after line 20—Insert new paragraph as follows:

*(aa)* the need for the Commission to consist of members who have knowledge of and experience in occupational health, safety and welfare;.

Once again the Hon. Mr Griffin's amendment is identical to one which the Hon. Ian Gilfillan has before the Chamber. Once again this is rather similar to other things that we have tried to do where we have tried to get people with the relevant knowledge as far as is possible. That is certainly what I was trying to achieve with the Animal and Plant Control Bill, which unfortunately did not get through on a previous occasion.

**The CHAIRPERSON:** I would point out that there is a difference between the two amendments. The amendment moved by the Hon. Mr Griffin has the word 'extensive', which is different from the amendment moved by the Hon. Mr Elliott on behalf of the Hon. Mr Gilfillan.

**The Hon. C.J. SUMNER:** We accept the Hon. Mr Elliott's amendment and reject the Hon. Mr Griffin's amendment on the basis that I think 'extensive' provides too much of a limitation. The reality is that one would want people with experience in this area, but that does not just mean specialist knowledge in the area. There is a very good case for having generalists with knowledge and interest in the area on commissions and boards of this kind, so I accept the Hon. Mr Elliott's amendment, but not the Hon. Mr Griffin's.

**The Hon. K.T. GRIFFIN:** I persist with my amendment. I think that there is an advantage in requiring extensive knowledge and experience for a commission which will have the day to day responsibility for administering this law, implementing it and making assessments about codes of practice. I think that there is an advantage in retaining that description as extensive knowledge and experience and not the generalist knowledge to which the Attorney refers.

**The Hon. M.J. ELLIOTT:** To some extent it may appear to be semantics, but I suspect that if a person has experience their knowledge would not be entirely superficial. I had not picked up the presence of the word 'extensive' in the amendment. As the Government has agreed to support our amendment, I will be opposing the Hon. Mr Griffin's amendment.

The Hon. K.T. Griffin's amendment negatived.

The Hon. M.J. Elliott's amendment carried.

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

Page 6, lines 21 and 22—Leave out all words in these lines after 'commission' and insert 'to take into account in the performance of its functions cultural and other diversity in the population of the State;'.

This amendment is associated with clause 15 and is intended to provide greater consistency between clause 8 (2) and clause 15. Under clause 15 the commission must in the performance of its functions take into account the interests of various people in the work force. This reflects the fact that there is a significant diversity in the population of the State. The proposed new provision will more fully recognise that it must be ensured that members of the commission are persons who can demonstrate that they can carry out what is required of the commission under this legislation. I dare say that I could move this amendment in my capacity as Minister of Ethnic Affairs as it charges the commission with the duty of taking into account in the performance of its functions the cultural and other diversities in the population of the State. As such, I feel that it ought to be supported.

**The Hon. K.T. GRIFFIN:** I am happy to support this amendment, but point out to the Attorney-General that it relates to the appointment of members of the commission and not to the functions of the commission. The amendment really requires the Minister to consider the need for the commission to take into account in the performance of its functions cultural and other diversities in the population of the State, so it is really trying to focus on the characteristics of the nominee of the Minister. To that extent, I support it, too, but there is a difference, as I perceive it,

between the function of the commission and the criteria to which the Minister is to have regard in making the appointment. I support the amendment, which is consistent with later provisions of the Bill.

**The Hon. M.J. ELLIOTT:** I also support the amendment. I look forward to the day when such clauses are no longer necessary.

Amendment carried; clause as amended passed.

Clause 9—'Terms and conditions of office'.

**The CHAIRPERSON:** There are two amendments on file, one from the Hon. Mr Griffin and one from the Hon. Mr Gilfillan.

**The Hon. K.T. GRIFFIN:** These amendments need to be canvassed together. There are different concepts involved. My amendments seek to pick up an issue which I, the Hon. John Burdett, and other members, have canvassed from time to time—the need to provide a certainty in the term of appointment of members of boards, commissions, committees and tribunals so that there is less prospect of those persons being subject to influence by the Government of the day in the performance of their respective functions. If there is a fixed term under the statute, there can be no argument about that person's term of office.

If there is a provision for appointment for limited periods, as there is in the Bill at present it is possible to have members being appointed for relatively short terms and not for the maximum terms allowed under the legislation, thus being, in a sense, on notice as to their performance as their time for reappointment approaches. I would prefer to see a five year fixed term for a full-time member and a three year term for part-time members with an opportunity to make the first appointments on a staggered basis so that there can be a rotational retirement of those part time members who are appointed after taking into account the recommendations of both employer associations and the United Trades and Labor Council. The effect of my amendment is to allow the full-time member a fixed term of five years and the three employer representatives, one to retire each year, to have a one year, two year and three year term respectively and thereafter to retire on a rotational basis. The same position applies to those who represent the interests of employees on the recommendation of the United Trades and Labor Council. I think that is preferable. The Hon. Mr Gilfillan's amendment really does not advance the case much, particularly in the way that I think it ought to be advanced for fixed terms and, accordingly, I do not support it, preferring my own amendment, which I will move at whatever time you believe is appropriate to put it on the record, Madam Chair.

**The Hon. C.J. SUMNER:** There is a lot of conceptual muddleheadedness about this particular issue when it comes to the Parliament. This commission is subject to the general control and direction of the Minister. As such, it is a statutory authority responsible to a Minister and the Minister is responsible to the Parliament and thereby to the people. The argument that somehow or other this commission is independent really, in the light of that, does not hold water, and neither it should. If there is a body that is independent and not subject to Ministerial direction—if, for instance, it is a court or arbitral authority that must make decisions that at times may be in conflict with the Government—then there is a need for some independence and the arguments relating to tenure of appointment may have some validity.

What we do by this sort of restriction, as provided in the Hon. Mr Griffin's amendment, is take away from the person who ought to have the responsibility in our democratic system—that is, the Minister—and give to some other body. I would have thought members opposite, critical as they are (at least, in theory) about quangos, would have accepted that if we have a quango, if it is there as an instrument of Government policy, then there ought not to be the sort of restriction on the term of appointment that is envisaged in the amendment of the Hon. Mr Griffin.

The other fact is that these sorts of provisions can create incredible difficulties. We may have, for instance, a very competent chairperson who has chaired the commission for five or six years and who reaches the age of 69. Under the rules which the honourable member accepted in Government—which we accept—appointments over 70 to these sorts of things are only made in exceptional circumstances. We may wish to appoint someone for a year because there is a particular job to be done—something that needs to be finished off. Under this sort of provision it makes that so much more difficult.

If we are talking about some kind of independent body which is not responsible to a Minister, the argument may have some validity but, where we are talking about a body which is responsible to a Minister, it seems to me that what members are doing by this sort of amendment is derogating from the fundamental principle that ought to operate in this Parliament, that the Minister ought to be taking the responsibility for the actions of his quangos and his departments. If that is the case, the appointments the Minister makes are part of taking that responsibility. If he makes bad or blatantly silly appointments or tries to stack the thing in a particular way, there are political consequences in the Parliament and in the electorate.

**The Hon. K.T. Griffin:** Why have a quango, then?

**The Hon. C.J. SUMNER:** Because there are some advantages in drawing in people from the community to give advice and to provide some input in the policy making in this area. The Hon. Mr Griffin's Government introduced the Ethnic Affairs Commission, which is also a Government authority subject to the control and direction of the Minister. There are some advantages in getting part-time community participation in the decision making process but, ultimately, the responsibility for that authority rests with the Minister—just as it does here.

In that circumstance it seems to me—and I know we have had this argument before—that restricting the way in which appointments can be made derogates from the capacity of a Minister to run the quango or the department in the way in which he sees fit and for which he takes responsibility. If it is an independent sort of quasi-arbitral or arbitral body, there may be a different argument for fixed periods of appointment, but I do not see that the argument has any merit in this sort of circumstance. In fact, I believe that it is an argument which really does abuse to the basic principles of ministerial responsibility and the basic principles of democracy, because it ought to be the Minister who takes responsibility for how the quango—in this case, the commission—runs, and in that sense the appointments the Minister makes are obviously one way in which the Minister takes responsibility for what happens in the commission.

**The Hon. I. GILFILLAN:** Perhaps, Madam Chair, you could make sure I am talking about the correct amendment.

**The CHAIRPERSON:** Clause 9, page 6, lines 28 to 31 is on file from the Hon. Mr Griffin, which he has not formally moved yet, as I understand it. You have on file an amendment to the same subclause which, while it is quite different, I feel could perhaps be discussed at the same time, seeing that the two amendments relate to the same subclause.

**The Hon. I. GILFILLAN:** The amendment on file in my name is, in fact, a restriction on the years.

**The CHAIRPERSON:** Yes, after the word 'years'.

**The Hon. I. GILFILLAN:** I move:

Page 6, line 29—After 'years' insert 'in the case of the full-time member and not exceeding three years in any other case'.

I will not argue that extensively. It appeared to us to be a more rational time span, and that is relative security of tenure for someone to exercise proper responsibility.

**The Hon. C.J. Sumner:** That is the problem I am putting. This is a Government instrumentality, subject to the control and direction of a Minister. It is not independent; it is conceptual muddleheadedness which we insist on visiting upon a whole—

**The Hon. I. GILFILLAN:** Why don't you make it 10 years? Why have a term of office at all?

**The Hon. C.J. Sumner:** It is not the period of time: it is whether or not we can appoint for periods shorter than the term; that is the argument.

**The Hon. I. GILFILLAN:** If it is not the period of time, I cannot see that there is anything to get too excited about, having three years instead of five, and a member can be reappointed and, on balance, it seemed to us to be reasonable that those people be reconsidered on a three rather than a five year cycle. The substance of the amendment which the Hon. Mr Griffin has not yet formally moved, I understand, we will not support other than this matter of the term of office.

**The Hon. K.T. GRIFFIN:** I do not disagree with tribunals and those exercising judicial or quasi-judicial authority. There is a very strong argument for security of tenure which cannot be open to any manipulation by Government at all and, in fact, that is something the Chief Justice addressed in his annual report about the independence of those sort of tribunals and the quality of justice which is dispensed or may not be dispensed in circumstances where there is insecurity in the tenure of the office in respect of those tribunals or quasi-judicial tribunals.

In respect of statutory authorities as such, I can acknowledge that there is an argument, as the Attorney puts it, that there should be complete flexibility in the appointment of members, but the argument which he propounds does not really go far enough. What he really ought to have, if he wants a quango or statutory authority which has the same effect as he is proposing is, really, to have the Minister incorporated as the statutory body.

**The Hon. C.J. Sumner:** You could have done that with Ethnic Affairs.

**The Hon. K.T. GRIFFIN:** But the Attorney introduced this different concept now, this new debate. He has introduced a debate on this Bill and I am talking to him about this provision. If he wants to go down that track, he really needs to consider the incorporation of the Minister as the statutory authority and just have an advisory panel which gives the sort of advice the Minister is proposing.

Certainly, the Minister ultimately has to be accountable, but that accountability comes from the fact that the Minister can give general directions to the statutory body. My understanding of the law on the subject is that it is not a power to give directions on every little matter which comes before the commission but a general power which relates more to policy directions than to day-to-day administration.

**The Hon. C.J. Sumner:** The Minister still has to take responsibility—that is the problem. He ought to have flexibility in the way appointments are made.

**The Hon. K.T. GRIFFIN:** What the Attorney is suggesting is that it ought to be within the power of the Minister, really, to remove these people at any time, rather than for cause, which is the present—

*The Hon. C.J. Sumner interjecting:*

**The Hon. K.T. GRIFFIN:** If we take that to its logical conclusion—and I will not debate it at great length now—we really ought to have a statutory body with a separate corporate identity where the membership is at the discretion of the Minister without any term of office, and with the Minister having the authority to, in fact, direct the operations of such an authority on day-to-day matters as well as on policy.

What this body seems to be is halfway between the concept that the Attorney-General is proposing and the independent body that might be the more appropriate body in some instances. All I am saying is that maybe there should be more thinking about the structure of statutory bodies such as this if the Minister ultimately wants to control it in every way and not have the commission or board members involved.

*The Hon. C.J. Sumner interjecting:*

**The Hon. K.T. GRIFFIN:** That is the logical conclusion of what you are proposing.

**The Hon. I. Gilfillan:** We go through this every time. I sit here and listen to the same argument over and over.

**The Hon. K.T. GRIFFIN:** No you don't. You haven't heard this argument before.

**The Hon. C.J. Sumner:** I support the Democrats' amendment in preference to your amendment.

**The Hon. K.T. GRIFFIN:** There needs to be much thinking about the concept and I suggest that what the Attorney-General has put is still not coming to grips with what is in the Bill.

**The Hon. C.J. SUMNER:** I prefer the Bill as it is, but having listened to the debate and the Hon. Mr Griffin's contribution, I indicate that if I have no choice then I will support the Hon. Mr Gilfillan's proposition and not the Hon. Mr Griffin's amendment.

**The Hon. K.T. GRIFFIN:** I still wish to move my amendment. I move:

Page 6, lines 28 to 31—Leave out subclause (1) and insert new subclauses as follows:

(1) Subject to this section, a member of the commission shall be appointed—

*(a)* in the case of the full-time member—for a term of office of 5 years;

*(b)* in the case of a part-time member—for a term of office of 3 years.

(1a) Of the first members of the commission to be appointed—

*(a)* one of the members appointed to represent the interests of employers and one of the members appointed to represent the interests of employees shall be appointed for a term of 1 year;

and

*(b)* one of the members appointed to represent the interests of employers and one of the members appointed to represent the interests of employees shall be appointed for a term of 2 years.

(1b) A member of the commission shall be appointed on such conditions as the Governor may determine and on the expiration of a term of office shall be eligible for re-appointment.

The Hon. K.T. Griffin's amendment negatived.

The Hon. I. Gilfillan's amendment carried.

**The Hon. K.T. GRIFFIN:** The next amendment I proposed concerned deleting subclause (4) *(a)* and is related to my proposed new subclause (1b). By deleting subclause (4) *(a)* I was desirous of ensuring that the conditions of appointment could not be such as to place an onerous burden on individual members. As I have lost the earlier amendment I think it is now inappropriate to move this amendment, but I still feel that there is some merit in considering the deletion of paragraph *(a)*. On balance, it is probably unwise to pursue the amendment, although I have explained the reason for it. I think it is a less harsh and much more appropriate provision in conjunction with proposed new

subclause (1b), and would ordinarily have come if I had succeeded in the last amendment. I now move my next amendment. I move:

Page 7, line 2—Leave out 'workers' and insert 'employees'.

This amendment is consequential.

Amendment carried.

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

Page 7, after line 3—Insert new subclause as follows:

(4a) The Governor must not remove a member of the commission from office under subsection (4) *(d)* without first consulting with the body that recommended that member's appointment to the commission.

This amendment is important because if a person is to be removed from the commission that removal should not occur without consultation with the body that recommended the member's appointment to the commission. That is relevant in relation to paragraphs *(d)* and *(e)* of clause 8 (1) where persons are nominated by the Minister taking into account the recommendations of employer associations and the United Trades and Labor Council. It seems to me that if there is not a requirement for consultation with those bodies before a member is removed there can be some arbitrary exercise of that power of removal. All it requires is a process of consultation, and nothing more.

**The Hon. C.J. SUMNER:** We do not think the amendment is appropriate. We think that this commission is responsible to Government.

**The Hon. K.T. Griffin:** Why bother to consult about appointing anyone if you are going to remove—

**The Hon. C.J. SUMNER:** As a matter of practice that would probably occur. I think the responsibility rests with Government. That is where it ought to remain. If someone is removed it can take the political consequences of it.

**The Hon. K.T. GRIFFIN:** I do not think that is good enough. Sure, the Government has to take the political consequences of removal, but it is not too much to expect consultation. If a member from the UTLC is unsatisfactory and the Government wishes to remove him, why should the Government of the day not consult with the UTLC?

**The Hon. Diana Laidlaw:** Or with the employers.

**The Hon. K.T. GRIFFIN:** Or with the employers. I would have thought that is reasonable. After all, they have consulted with the employer and employee associations for the appointment; what is wrong with consulting for removal?

**The Hon. I. GILFILLAN:** The replacement needs to be from someone who has been nominated by that group so I am not sure a lot can be gained by it. The Attorney-General does not like it so I will not support it.

Amendment negatived.

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

Page 7, line 13—

After 'office' insert '(but a person who is to fill a casual vacancy in the office of a member may only be appointed for the balance of the term of the person's predecessor)'.

This seems to be a reasonable consequence of a vacancy being filled.

**The Hon. C.J. SUMNER:** The amendment would have more relevance if we had fixed terms. As we do not have them, the amendment is not relevant or necessary.

**The Hon. I. GILFILLAN:** What does the Attorney mean by saying we do not have fixed terms?

**The Hon. C.J. SUMNER:** People are appointed for up to three years. If one fills a casual vacancy for three years, it is not a problem. If every member has a fixed term, the amendment has merit, but it is no longer relevant as that does not apply.

**The Hon. I. GILFILLAN:** Perhaps from misreading, I thought the terms were fixed. Certainly, based on the Attorney's logic that argument is true, and I imagine the Hon. Mr Griffin would agree. If there is no fixed term, there is no point in the amendment.

**The Hon. K.T. GRIFFIN:** That is probably right. Therefore, I seek leave to withdraw my amendment.

Leave granted; amendment withdrawn.

Clause as amended passed.

Clause 10 passed.

Clause 11—'Proceedings, etc., of the commission.'

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

Page 7, line 35—Leave out 'workers' and insert 'employees'.

This amendment is consequential.

Amendment carried.

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

Page 7, lines 42 and 43—Leave out all words in these lines after 'commission' and insert '(and the person chairing the meeting does not have a second or casting vote)'.

As subclause (3) is presently drafted it provides for the person who occupies the Chair at the meeting to have a casting vote as well a deliberative vote. I do not think it is appropriate to have a casting vote. It is sufficient if there is an equality of votes for the members to endeavour to resolve the issue among themselves without resorting to one of the members having an additional vote. That may create tension from time to time but, in a body such as this, granting an additional vote to whoever happens to occupy the Chair, if the Chairperson is not present, is not appropriate.

**The Hon. C.J. SUMNER:** The Government rejects the amendment. It believes there is a need to have a deadlock provision.

**The Hon. I. GILFILLAN:** Can the Attorney indicate whether this is a precedent? How does the provision compare with the role of the chairperson of similar authorities? Is it customary for a casting vote to be provided?

**The Hon. C.J. SUMNER:** There is not any given rule in this area. Each piece of legislation is considered on its merits. I do not think by rejecting the amendment and giving the Chairperson the casting vote is a situation that is out of the ordinary. After all, the Chief Justice of the High Court has a casting vote where there is an equality of votes. If it is good enough for the High Court, it is good enough for the commission.

**The CHAIRPERSON:** Like my position.

**The Hon. I. GILFILLAN:** I would not be reckless enough to bring your voting capacity into this matter, Ms Chairperson—it is irrelevant. We will support the amendment. If the commission in the area of its work is divided to that extent, I agree with the Hon. Mr Griffin that the members should make an effort to reach a decision that will be clear cut concerning the people involved.

**The Hon. C.J. SUMNER:** It is probably too late to help the Hon. Mr Gilfillan, but the Parliamentary Counsel advises that it is a reasonably standard clause and, if it is good enough for the High Court, it is good enough for the commission.

Amendment carried; clause as amended passed.

Clauses 12 and 13 passed.

Clause 14—'Functions and powers of the commission.'

**The CHAIRPERSON:** The Hon. Mr Griffin has an amendment to page 8, after line 38.

**The Hon. K.T. GRIFFIN:** This relates to my earlier attempt to remove the Industrial Commission from the resolution of disputes. As I was not successful on that, I think this amendment now becomes inappropriate because, by virtue of the vote carried earlier on the question of the Industrial Commission, this Occupational Health and Safety Commission is not to have responsibility for the resolution of disputes relating to occupational health, safety and wel-

fare in the context of disagreements about safety representatives, safety committees, and so on. Therefore, it would be inappropriate for me to move my amendment.

**The Hon. DIANA LAIDLAW:** I move:

Page 9, after line 25—Insert new subclause as follows:

(1a) The commission must when preparing or reviewing codes of practice on occupational health, safety or welfare regulations or standards take into account the provisions of the Equal Opportunity Act 1984.

A wide ranging number of functions is designated to the commission. I wish to add a further responsibility. This amendment was to complement an amendment I moved earlier to clause 6(1). However, that amendment was defeated. As I said when moving that unsuccessful amendment, there are inconsistencies. They may be blissfully denied—

**The Hon. C.J. Sumner:** You've got a guilty conscience.

**The Hon. DIANA LAIDLAW:** My conscience is clear.

**The Hon. C.J. Sumner:** You're the only politician who has a clear conscience.

**The Hon. DIANA LAIDLAW:** The Attorney-General should speak for himself—I have a clear conscience. I have no trouble with my conscience. I do not know about the Hon. Ian Gilfillan's conscience, but I know about my own.

*Members interjecting:*

**The Hon. DIANA LAIDLAW:** I do not need to go and see the Pope. I am quite relaxed, but I am disappointed that the Government did not see fit to clear up this matter.

*The Hon. C.J. Sumner interjecting:*

**The Hon. DIANA LAIDLAW:** Perhaps the Attorney's conscience has been prodded. I suggest that that is more likely. I am emphasising the point that I am particularly pleased that the Government has seen the desirability of my amendment. I also add that I am pleased that the decision is not left to the Democrats and their vote.

**The Hon. C.J. SUMNER:** I support the amendment. It seemed to me in the light of the Hon. Miss Laidlaw's attitude to the previous debate on equal opportunity that this was something of a sop, as I said, to her conscience. However, she assured me that she has a clear conscience so I will not pursue that any further.

*The Hon. Diana Laidlaw interjecting:*

**The Hon. C.J. SUMNER:** Yes, I would be wasting my time and we really do not have time to waste, so I accept the amendment.

**The Hon. I. GILFILLAN:** It is important that the Democrat opinion be heard in these matters. As the Government defeated the Hon. Diana Laidlaw's previous amendments with callous indifference to the issue—compared to the Democrats who gave earnest consideration to them—it is proper that the record show the change of face that was obvious to anyone who was watching the Leader of the Opposition instead of casting around for innocent little Democrats. Logically, the amendment is no longer necessary. However, it is a nice expression of a point of view which any commission would be foolish to ignore, and we support it.

Amendment carried.

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

Page 9, line 30—Leave out 'if it thinks fit' and insert 'so far as reasonably practicable'.

Clause 14(3) provides:

The commission should, if it thinks fit—

*(a)* consult with the National Occupational Health and Safety Commission in relation to matters of common interest;

*(b)* take into account research, studies and surveys undertaken or promoted by the National Occupational Health and Safety Commission;

and

*(c)* take into account, in the formulation of codes of practice under this Act, occupational health and safety policies and codes of practice developed or adopted by the National Occupational Health and Safety Commission.

It seems to me that there should be something stronger than a discretion in the State commission and that it is more positive to provide that it should, so far as reasonably practicable, consult. We feel that there is a need to consult. It should be encouraged. The form of the words that I seek to insert are much more positive and encouraging than the discretionary words presently in the Bill.

**The Hon. C.J. SUMNER:** I have read the amendment sheets circulated by honourable members and I note that the Hon. Mr Gilfillan has an amendment in precisely the same terms as this. So unless the Hon. Mr Gilfillan has changed his mind since tabling his amendment, I assume that I will not have the numbers to defeat the Hon. Mr Griffin's amendment. However, I formally oppose the amendment (although I imagine that I will not get anywhere).

Amendment carried.

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

Page 10, after line 17—Insert new subclauses as follows:

(9) The commission shall prepare and publish guidelines to assist people who are subject to the operation of this Act and in particular guidelines relating to—

*(a)* the responsibilities of employers, employees, occupiers of workplaces and manufacturers under this Act;

*(b)* the formation of work groups;

*(c)* the establishing of health and safety committees;

*(d)* the procedures and functions of health and safety committees;

and

*(e)* the resolution of health, safety or welfare issues.

(10) The commission may engage experts to assist in the performance of its functions or to advise it in relation to any technical matter.

The latter part of my amendment puts the question beyond doubt and ensures that the commission does take advantage of outside experts in the performance of its functions. Although there are provisions enabling regulations to be promulgated dealing with these sorts of issues, I think it is important to have a specific responsibility placed upon the commission to publish these sorts of guidelines and to ensure as much as possible that in the publication of those guidelines there is full cooperation between the commission and both employers and employees in the workplace.

**The Hon. I. GILFILLAN:** Although our amendment is identical to subclause (9), we do not support the new subclause (10), not because we oppose it, but because we feel it is an unnecessary adjunct to the Bill. The commission, if it is fulfilling its purpose, will automatically be engaging experts where it sees it as appropriate.

**The Hon. C.J. Sumner:** Are you supporting new subclause (9)?

**The Hon. I. GILFILLAN:** Yes.

**The Hon. C.J. SUMNER:** We are really in trouble here because I support new subclause (10) but I do not support subclause (9).

**The Hon. I. Gilfillan:** That is your problem.

**The Hon. K.T. Griffin:** A double header.

**The Hon. C.J. SUMNER:** Yes, that is right. The Hon. Mr Griffin has won on both points; he has formed shifting alliances.

**The Hon. L.H. Davis:** That could be the title of your memoirs. It's a nice title that—that should be the Democrats title.

**The ACTING CHAIRPERSON:** Order!

**The Hon. C.J. SUMNER:** After 11 years and dealing with the Democrats, I know what you mean.

**The Hon. L.H. Davis:** There could be a foreword by Lance Milne and perhaps a second one in case he changes his mind.

**The Hon. C.J. SUMNER:** That is true: put one at the beginning of the book and one at the end. The Government opposes the proposed new clause (9) relating to guidelines. Our major concern is that one would not wish the guidelines to become the absolute rule with respect to an employer's duty of care.

**The Hon. I. Gilfillan:** How many guidelines ever do? You are seeing bogeys where they don't exist.

**The Hon. C.J. SUMNER:** I am not sure about that.

**The Hon. I. Gilfillan:** You are being badly advised.

**The Hon. C.J. SUMNER:** In that case we had better start all over again. I understand that the Hon. Mr Gilfillan has not been averse to taking advice from the representative of the Minister of Labour who sits on my left in this Chamber.

**An honourable member:** It is not proper to make reference to such an officer.

**The Hon. C.J. SUMNER:** I know that. I know that he has discussed a number of issues with the Hon. Mr Gilfillan and I therefore find the honourable member's comments in that regard somewhat odd. That is the major concern but I do not wish to expand it beyond that, except to say that I think it would be a pity if these guidelines became the only reference point as far as an employer's duty of care is concerned. The realities are that the amendment is the same as far as subclause (9) is concerned from the Democrats and the Liberals, so there is no point in pursuing the argument.

Amendment carried; clause as amended passed.

Clause 15—'Commission to have regard to various differences in the work force.'

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

Page 10, line 26—Leave out 'workers' and insert 'persons'.

Amendment carried.

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

Page 10, after line 28—Insert new subclause as follows:

(2) The Commission should, so far as reasonably practicable, ensure that any guideline or information provided for the use in the workplace is in such languages and form as are appropriate for those expected to make use of it.

This subclause is designed to require the commission to ensure that any guideline or information shall, so far as reasonably practicable, be in such language and form as is appropriate for those expected to make use of it. The object of this is to ensure that the commission, in publishing guidelines and information, carries the responsibility to ensure that they are available in a variety of languages. The employer could be expected to make that information available, but the onus of providing it in a variety of languages should more properly rest on the commission. If the commission does it, it is more likely to be consistent with other guidelines for other workplaces. Also, the commission has the advantage of access to interpreters and translators who can be relied upon to provide the information in the appropriate and accurate other language.

Amendment carried; clause as amended passed.

Clause 16—'Delegation.'

**The Hon. I. GILFILLAN:** I move:

Page 10, line 30—Leave out 'or powers'.

The purpose of this amendment is to accept that the commission can delegate its functions and therefore I indicate that we are not supporting the next amendment of the Hon. Trevor Griffin, which was to be somewhat restrictive in connection with those to whom the commission can delegate. We feel that it is quite reasonable for the commission to delegate a function so that its actual tasks can be spread about. In fact, it may be quite appropriate for that to be the case, but the delegation of powers is a different matter. We have a serious concern about that. Although the commission itself may not at this stage have the adjudicating powers that were originally considered part of its diet, we still believe that this is going further than is reasonable for delegating. I move the amendment bearing in mind that we would not object to having the delegation of functions to registered associations or safety representatives. The functions are ancillary and helpful, whereas the powers are virtually usurping the authority of the commission. That is why we oppose 'or powers'.

**The Hon. C.J. SUMNER:** The Government opposes this amendment. I point out that this sort of delegation clause is virtually universal in Bills of this kind. For instance, the commission, under clauses 53 and 38, has power to require information, and to enter workplaces and the like. The amendment would stop the commission delegating these powers to employees of the commission. That is really quite inappropriate. The commission will be a responsible tripartite body and such a restriction is not appropriate. It is under the general control and direction, in any event, of the Minister. Therefore, there is also ultimate political responsibility. The amendment would have the effect of making it impossible or difficult to carry out its delegated functions. What are you to do if you have a function under this Act? Does that mean that the whole commission—10 people—have to go out and actually perform the particular function that is assigned under the Act?

**The Hon. I. Gilfillan:** Have a closer look. Function is not touched. What is the difference between a 'function' and a 'power'?

**The Hon. C.J. SUMNER:** Well, it may be something of a semantic argument, but as far as I am concerned this does enable the commission to delegate to other people what it may need to do under the Act. In any event, it seems to me that the power of delegation is something that ought to be broad to enable the commission to carry out its functions properly. All I can say is that this is the formulation that has been used in Bills of this kind where powers are, in fact, delegated.

**The Hon. K.T. GRIFFIN:** I see some difficulty in deleting 'powers'. It may be that, in the exercise of some powers, the commission as a whole body has to go out and exercise those powers. To some extent, this power to delegate by a statutory body is usual. However, it is not unusual to place some restriction on the power to delegate. We have done that on a number of occasions over the past few years, so what I would prefer to see is the word 'powers' remaining in the clause but there being a limitation on the power to delegate. That is why I have a provision, which we will debate in a moment, to limit that power of delegation. I am not persuaded to support the Hon. Mr Gilfillan's amendment at this stage.

Amendment negatived.

**The Hon. K.T. GRIFFIN:**

Page 10, after line 33—Insert new paragraph as follows:

*(ab)* may not be made to a registered association or a health and safety representative;.

This amendment is designed to limit the power of delegation so that that delegation may not be made to a registered association or a health and safety representative. It would, in my view, be a quite incestuous relationship to have the commission appointing a registered association, whether employer or employee association, or to have a health and safety representative exercising any of the powers of the commission.

I have no problems with the commission delegating powers to employees or officers of the commission. It may be appropriate for the commission to delegate some functions

or powers to a consultant accountable to the commission, but it is quite inappropriate and unacceptable for the power of delegation to extend to registered associations or health and safety representatives. That is why I want to restrict that power of delegation and why I have moved my amendment.

**The Hon. I. GILFILLAN:** Unfortunately, and uncharacteristically, this is a silly amendment, because it may very well be appropriate for all the registered associations or all safety representatives to have certain functions which could be argued are part of the functions or a shared function of the commission, so I have no sympathy with the amendment. I remind those who were so quick to reject my earlier amendment that there is definitely some nervousness if the commission were silly enough—and fortunately I do not think that it would—to start dishing out its powers. It is time that parliamentary language started to be a bit more precise. Powers and functions are different things and should not be wrapped together.

**The Hon. K.T. GRIFFIN:** It is not a silly amendment. It is one of substance and I intend to divide on it because I regard it as such an important issue. It is an important principle. The commission should not be authorised to delegate its powers or functions.

**The Hon. I. Gilfillan:** There is lots of work that can be shared in a registered association, such as keeping statistics.

**The Hon. K.T. GRIFFIN:** To suggest that the commission ought to be delegating the function of keeping statistics is a ludicrous proposition. What it ought to be doing is collecting statistics. My amendment does not prevent the collection of statistics. In fact, I hope that the commission is actively collecting statistics. It would require registered associations to provide statistical data and other information which might be necessary in developing principles, policies and codes of practice in relation to occupational health, safety and welfare.

It is quite inappropriate for these two groups to exercise any of the powers or functions of the commission. In fact, I do not believe that the Hon. Mr Gilfillan has really grasped the significance of this power of delegation. It means that the Minister, under the Attorney-General's scenario, can give directions to the commission to delegate to anybody at all including trade unions and employer associations or health and safety representatives.

I find that totally foreign to the concept of an occupational health and safety commission, which is meant to be neutral in the exercise of its functions and in encouraging and persuading employers and employees to comply with the principles, guidelines and codes of practice in the occupational, safety health and welfare area. To suggest otherwise misses the whole point of both the power of the commission and the consequence of this delegation. I indicate strenuously that I will take this amendment to its ultimate destiny.

**The Hon. C.J. SUMNER:** I have listened intently to the debate and am trying to weigh up the various contentions between the Hon. Mr Griffin and the Hon. Mr Gilfillan. I have to say that, on balance, I think that the Hon. Mr Gilfillan's reasons for rejecting the amendment are more persuasive than the Hon. Mr Griffin's reasons in putting it forward, so I therefore feel that I should support the Bill as introduced by the Government.

The Committee divided on the amendment:

Ayes (9)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin (teller), C.M. Hill, J.C. Irwin, Diana Laidlaw, R.I. Lucas, and R.J. Ritson.

Noes (10)—The Hons G.L. Bruce, J.R. Cornwall, M.J. Elliott, M.S. Feleppa, I. Gilfillan, Carolyn Pickles, T.G. Roberts, C.J. Sumner (teller), G. Weatherill, and Barbara Wiese.

Pair—Aye—The Hon. M.B. Cameron. No—The Hon. B.A. Chatterton.

Majority of 1 for the Noes.

Amendment thus negatived; clause passed.

Clause 17—'Commission to be subject to control of Minister.'

**The Hon. K.T. GRIFFIN:** I cannot let this opportunity go by without reflecting upon the comments of the Attorney-General on the establishment of the commission and its relationship to the Minister and the members of the commission. I do not think this clause, which makes the commission subject to the general control and direction of the Minister, is as broad as the Attorney-General has suggested but, if it is, there is no need for it to have members of the commission as such, because they cease to have minds of their own and merely act in what might be regarded as an advisory role.

The public at large ought to recognise that in that context this commission is not to have any independence of mind or spirit, but to be very much an integral arm of the Government of the day, akin to a government department, with the Minister having the ultimate authority as well as the responsibility to deal with the whole area of occupational health and safety. That has some fairly interesting consequences when we consider, for example, clause 61, where the Minister may, on the recommendation of the commission, approve any code of practice for the purposes of this Act.

The scenario which I have drawn, which is what the Attorney-General has been saying, means that if the commission does not recommend in the way the Minister wishes, the Minister may give a direction to the commission to make a recommendation to him to approve a code of practice. So, in effect, there is no protection in the requirement in clause 61 that the Minister may approve the code of practice only on the recommendation of the commission. It is an illusion that the commission has been interposed between the Minister and the promulgation of the commission, and is no protection for any members of the community, particularly employers and employees, in the context of this Bill. I think it is important to put that on the record quite clearly, so that there can be no doubt about the way the Government and the Attorney-General see this commission actually operating.

**The Hon. J.R. CORNWALL:** It is fortuitous that I am the pinch hitter, I suppose, in a sense, in this clause, because no-one in South Australia has had more experience in having to live with the phrase, 'subject to the general direction and control of the Minister' than the Minister of Health. Someone in his wisdom put this into the South Australian Health Commission Act when it was going through this Parliament a decade ago. It has been the subject since that time of numerous interpretations. The one I favour most, of course, is that which was given to us by the former Solicitor-General, Malcolm Gray, who interpreted it broadly, at least, in the literal sense.

It was Malcolm Gray's opinion that it could be interpreted to a significant extent literally. However, the conventional wisdom—the wisdom of practice, if you would—rather than the strictly legal interpretation is that it does keep the South Australian Health Commission at arm's length from the Minister. If it were not for the reasonably forceful personality of the Minister of the day all 200 of the health units would be out there with the fanciful notion of their own autonomy, and the commission itself would

believe that it was operating like the Electricity Trust of South Australia.

Quite frankly, if I were in charge of this Bill and were asked to give my learned opinion, based on many years of experience, I would cut out the word 'general' immediately. Let me make it clear to honourable members that when the amendments to the Health Commission Bill come in here in the autumn session, you can bet your life that, on all the advice I have had from the Crown Solicitor, from our senior legal consultant Ian Bidmeade and from everyone else who matters, based on the experience of the first nine years of practical operation of the Health Commission Act, the word 'general' will be deleted.

It is extraordinary, in the circumstances, for a former Attorney-General to get to his feet and say that he is concerned about the proposed commission being subject to the general direction and control of the Minister. Clearly, the intention is that the commission will work at arms length from the Minister, I would imagine, in the same sense that ETSA operates at arm's length from the Minister of Mines and Energy. No-one has ever seriously suggested that the Minister of Mines and Energy should be blamed for a power failure. Using the same phraseology, every time someone loses a bandaid in the health system Martin Cameron jumps to his feet throwing handfuls of sand hoping some will stick in my eyes and says—

**The Hon. I. GILFILLAN:** I rise on a point of order. There is no amendment before the Chair on this clause, and we are now debating the Health Commission. I ask you, Ms Chairperson, to bring discussion back to the Bill.

**The CHAIRPERSON:** People can ask questions on any clause without having an amendment before the Chair.

**The Hon. J.R. CORNWALL:** In terms of the general direction and control of the Minister, the phrase has certainly been interpreted in a number of ways, but the least restrictive way would suggest that the commission would deal substantially at arm's length from the Minister of the day.

**The Hon. C.J. SUMNER:** I understand that the Hon. Mr Griffin made a point while I was out.

**The Hon. K.T. Griffin:** I was putting on the record what you said earlier about the status of the commission, that is all.

**The Hon. C.J. SUMNER:** What I said earlier was that it is an authority created by an Act of Parliament subject to the general control and direction of the Minister, that is, it is a quango responsible to a Minister. There is nothing particularly exceptional about that; in fact, it is highly desirable and ought to be the position. I do not resile from that. To suggest that it does not have any independent capacity for action or that the Minister will be sitting on every individual decision would be an overreaction. The Hon. Mr Gilfillan agrees with me that there ought to be political responsibility for an organisation of this kind, and that is what there is as a result of this clause.

Clause passed.

Clause 18 passed.

Clause 19—'Duties of employers.'

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

Page 11—
Line 17—Leave out 'worker' and insert 'employee'.
Line 19—Leave out 'worker' and insert 'employee'.
Line 26—Leave out 'workers' and insert 'employees'.

These amendments are consequential.

Amendments carried.

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

Page 11, line 30—After 'as are' insert 'reasonably'.

Clause 19 deals with the duties of employers and one of those duties is to provide such information, instruction, training and supervision as are necessary to ensure that each employee is safe from injury and risks to health. I wish to insert 'reasonably' so that it will read 'as are reasonably necessary to ensure that each employee is safe from injury and risks to health'.

It is appropriate to qualify the word 'necessary' by the use of the word 'reasonably', to put it in appropriate context. If the word is not there it is a matter of debate as to what might be absolutely necessary to ensure that each employee is safe from injury and risks to health, recognising that an offence is created if the provisions are not complied with, and a Division 2 fine which is a $50 000 maximum for a first offence and a $100 000 maximum for a second offence. It seems to me that we should qualify the word 'necessary'. I draw attention to the fact that in subclause (1) *(a)* the Bill already refers to the provision and maintenance so far as is reasonably practicable for a safe working environment, safe systems of work and for plant and substances in a safe condition. My amendment is consistent with that.

**The Hon. I. GILFILLAN:** We had intended to oppose the amendment. The point is valid. 'Necessary' needs some sort of qualification because it can be interpreted as being absolutely specific. If each worker is not assured safety from injury and risk to health then an employer has offended under this subclause. I do not think that is the intention of the Bill. I put it to the Committee that the word 'considered' could be used so it would read 'supervision as are considered necessary'.

**The Hon. K.T. Griffin:** Who considers?

**The Hon. I. GILFILLAN:** The Hon. Mr Griffin asks who is the person or authority doing the considering and I do not know. On the other hand, 'reasonably' is as vague.

**The Hon. K.T. Griffin:** It has an established meaning in law.

**The Hon. I. GILFILLAN:** I am putting what I consider to be a preferred word. I see that the word 'reasonably' is traditionally used and it modifies the wording. I feel some persuasion to accept the amendment because, without it, it appears a hard and inflexible clause.

**The Hon. C.J. SUMNER:** I do not see that the amendment is necessary in the light of subclause (1) which deals with the duty of an employer as far as reasonably practicable to ensure that the employee is safe from injury and risks to health, and as it is picked up in the first part of subclause (1) it seems to me that any qualification on the provision of information, etc, is not necessary and, in fact, may take something away from an employer's important obligations in this area.

**The Hon. K.T. GRIFFIN:** I suggest that the word 'considered' does not add to the meaning of paragraph *(c)*. The word 'reasonably' does, and does as the Hon. Mr Gilfillan indicated, have some meaning in law.

I do not accept what the Attorney has just argued because paragraph *(a)* contains the words 'so far as is reasonably practicable'. Either he takes the word out there on the basis of his argument or he does not object to my additional word 'reasonably' in paragraph *(c)*. It is necessary to have an appropriate qualification, and 'reasonableness' in law has a long established meaning and has been the subject of invariable determinations such that it can be interpreted appropriately in litigation. Remember, this clause relates to statutory offences and penalties are very high. It is appropriate not to place an absolute requirement on an employer but to modify it as I have suggested.

**The Hon. I. GILFILLAN:** I support the amendment. On closer analysis it is soundly proposed. 'Reasonably' in subclause (1) does not apply to the conditions in paragraphs *(a)*, *(b)*, and *(c)*. As the Hon. Mr Griffin has pointed out,

'reasonably' is provided in paragraph *(a)*. Without 'reasonably' or some modifying word in paragraph *(c)* it virtually means that, if a worker in a workplace had an accident, an injury or a risk to health, the employer has failed to comply with that provision and is liable to a penalty. As it is, the clause implies that if a worker has an injury, he or she has then obviously not been kept safe from injury and, therefore, the information, instruction, training and supervision has not been as necessary to ensure it and the employer would be liable to a penalty. I support the amendment.

Amendment carried.

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

Page 11, line 30—Leave out 'worker' and insert 'employee'.

This is a consequential amendment.

Amendment carried.

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

Page 11, after line 40—Insert new subclause as follows:

(2a) Where in proceedings for an offence against subsection (1) it is proved that the defendant complied with a provision of an approved code of practice dealing with the matter in respect of which the offence is alleged to have been committed, the defendant shall be taken to have exercised the standard of care required by that subsection.

Subclause (2) reverses the onus of proof. Remembering that clause 19 deals with statutory offences, it is important to keep the whole issue in perspective. Subclause (2) provides that, where proceedings are instituted for failing to provide and maintain a safe working environment, safe systems of work, plant and substances in a safe condition or adequate facilities of a prescribed kind for the welfare of workers or information, instruction, training and supervision, and it is proved that the defendant failed to comply with the provision of an approved code of practice, the defendant is to be taken to have failed to exercise the standard of care required by subclause (1).

But that is not the end of it. The Crown has then established a *prima facie* case and the employer or defendant is at liberty to prove on a reverse onus of proof basis that, although the code of practice was not complied with, the employer did do such things as were the equal of or better than the code of practice to avoid the conviction that might otherwise be recorded. That is all right so far as it goes, but it seems to me that there needs to be more certainty in the system, particularly in relation to prosecutions.

My proposed subclause (2a) is designed to deal with another aspect of that same issue. If the defendant complies with a provision of an approved code of practice dealing with the matter in respect of which the offence is alleged to have been committed, then the defendant for the purposes of this clause only is to be taken to have exercised a standard of care required by the subclause. If there is a code of practice, and if the employer complies with it, that satisfies the standard of care specified in clause 19 and no prosecution can be laid or, if it is laid, can succeed. My proposed subclause (2a) complements the provisions already in the Bill which place the onus of proof on an employer but also gives the employer an even chance if the employer has complied with codes of practice. It is appropriate to provide that sort of safeguard.

It is also relevant, I suggest, in circumstances of trying to achieve some certainty in the administration of the law, and I think to that extent the new subclause certainly assists in doing that. If the codes of practice are developed in consultation with appropriate persons, bodies and organisations, then there really can be no quarrel with the extent to which a defence is achieved by compliance with such a code of practice.

**The Hon. C.J. SUMNER:** The Government opposes the amendment. It is somewhat misconceived because the codes of practice are not like regulations: they are broad codes of practice established for the benefit of employers and employees, but they are only a minimum position. There may be circumstances in which the employer has special knowledge in a particular industry. The code of practice may not have caught up with the latest information in relation to a particular industry. An employer with that knowledge of the latest information and the sorts of precautions that ought to be taken with respect to the industry might ignore them. In that case there ought not to be an out by saying, 'I complied with a code of practice.'

Certainly, I would think that the circumstances in which a prosecution would be successful against someone who complied with the code of practice would be rare and unusual but, because codes of practice are not laws and regulations, as such, but represent minimum standards and because the employer may have additional knowledge or the code of practice may not have been up to date with the latest in safety requirements in a particular environment, or this additional proposition that the employer may in some circumstances have to go beyond the code of practice ought not be excluded from the legislation. I readily concede that the circumstances in which the prosecution would either be issued or alternatively be successful where an employer complied with the code of practice would be rare.

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

**The Hon. K.T. GRIFFIN:** One of the difficulties is that people out in the field only have as their standard the code of practice. There are many small businesses around which do not have all the resources or facilities of large employers. They comply with the code of practice. They may find that it is outdated, but I would have thought that they have a reasonable expectation that the code of practice will be up to date if it is promulgated by the Minister upon the recommendation of the South Australian Occupational Health and Safety Commission. I think it is extraordinary to suggest that people out in the field who do not have all that expertise, backup support, resources or whatever should be at least at risk of a prosecution for which the fine for a first offence is a maximum of $50 000.

I can give the Committee instances where even the Department of Labour could not give an indication of the standards. One instance is where a school in one of the many inspections by Department of Labour inspectors of technical studies, science laboratories and canteens was told that it needed adequate ventilation in the science laboratory. The school did not disagree with that but asked the inspector what was adequate ventilation. The inspector said, 'I do not really know; I do not have any criteria. I suggest that you go out and get a ventilator,' and he mentioned a particular manufacturer. So in all good faith, prepared to spend several thousand dollars, the school sent someone out to the manufacturer seeking to acquire this particular ventilating system. Curiously, the manufacturer said, 'I am surprised that a Department of Labour inspector sent you to me because the Department of Labour says that my ventilator is inadequate.' The school authorities could not win.

If a Department of Labour inspector did not know what criteria were established and required for ventilation in the science laboratory and did not know that the particular ventilator he recommended was defected by the department, then what hope does an ordinary employer have in trying to cope with the law? I am trying to ensure that, if there are codes of practice, there is a reasonable expectation that

they will be up to date and the employers—particularly small employers or people without the necessary experience—can reasonably rely on those codes of practice without running the risk of being prosecuted. My amendment simply picks up that aspect to ensure that compliance with a code of practice in those circumstances is satisfactory compliance with the standard of care for the purposes of prosecution. That is what it is about.

This clause is not about anything other than prosecutions. I think it is quite outrageous that there should be that sort of uncertainty reflected in the example that I have given. It is carried over into this area of the Bill in respect of prosecutions. However, as the Australian Democrats have indicated that they will not support my amendment (a view to which I express some surprise and concern), I indicate that if I do not have it carried on the voices I do not intend to call a division.

Amendment negatived.

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

Page 12—
Line 1—Leave out 'workers' and insert 'employees'.
Line 5—Leave out 'workers' and insert 'employees'.
Line 8—Leave out 'workers' and insert 'employees'.

Amendments carried.

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

Page 12, lines 8 and 9—Leave out '(in such languages as are appropriate)'.

The clause seeks to require an employer so far as is reasonably practicable to provide information to the employer's employees in such languages as are appropriate. I move the amendment only because the previous amendment was carried, where the Occupational Health and Safety Commission is to provide information in various languages. This amendment removes the onus from the employer to actually have information translated. Of course, it should not remove the obligation from the employer to provide the information supplied by the commission in various languages to employees in those languages as might be appropriate to the employees. There is no intention at all of removing the obligation to have the material available in different languages but merely to remove the obligation from the employer to actually do the translations. That is the emphasis of this amendment.

**The Hon. C.J. SUMNER:** The amendment is opposed by the Government. It seems to me to be somewhat inconsistent with the earlier amendment put forward by the Hon. Mr Griffin under clause 15 in relation to the commission having responsibility to produce guidelines in appropriate languages. The Hon. Mr Griffin recognised the validity of the commission doing this. Apparently he does not feel that employers have any obligation to do it. Employers should have an equal responsibility to their workers to provide such information in a form that is understandable by their workers. If anything, they would have a clearer knowledge of the particular language requirements of their work force. The employers' responsibility is to have regard to the individual characteristics of their work force. The general duty of care is owed to each individual worker.

**The Hon. I. GILFILLAN:** I oppose the amendment. However, I think there is consistency. I think the Attorney accuses the Hon. Mr Griffin unfairly. The consistency is that the earlier amendment and this one seek to offload the obligation on the employer on to the commission as far as translations are concerned. I feel that much of the material prepared by the commission in many languages will be widely available and of use to employers, so there is not an undue onus on employers to provide translations of all material. However, I think that where an employer has people in his or her employ who require another language for proper or adequate communication, part of the obligation of that employment is to provide this material in languages that are appropriate. I oppose the amendment.

Amendment negatived.

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

Page 12, line 11—Leave out 'workers' and insert 'employees'.

Amendment carried.

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

Page 12, lines 15 to 20—Leave out the word 'and' and paragraph *(e)*.

This amendment is to delete paragraph *(e)*, which provides:

If the employer is an employer of a prescribed class—appoint, employ or engage people, who hold prescribed qualifications or possess prescribed experience in the field of occupational health and safety, to provide advice and assistance to the employer in relation to occupational health, safety and welfare.

What this suggests is that there is a fairly open-ended opportunity for any Government to impose upon an employer of such size as we are not aware of at the present time an obligation to, in fact, have people on staff who hold particular qualifications or prescribed experience. It may well be described as a job creation clause for some employers.

The concern I have about it, apart from that, is that it may not be appropriate for a particular employer to actually employ a person with prescribed qualifications, but it may be appropriate to have a consultant and it may be appropriate to have several consultants with different expertise but all covering occupational safety, health and welfare. That is the appropriate way to go and, with the obligations which are placed on employers generally by this Bill and the penalties which are hanging over their heads, it seems to me that they are going to try to seek the best possible advice in respect of improvement of the work environment and they do not need the regulation making power to compel them to do that.

The other difficulty is that, from all the information I have, this is just a developing area of expertise. There are few people with good qualifications in occupational health, safety and welfare and it will be some years before there is at least a reasonable number of qualified persons available for this sort of task. It is not the sort of task for which you would do a two or three week high pressure course and then become an instant expert: it is something which might well need longer periods of study and practical experience. If this provision was enacted and regulations were promulgated to prescribe particular classes, qualifications and experience, the concern is that there would not be enough people to satisfy the demand created by statute or regulation. In any event, it may not be appropriate for a particular workplace to employ people with those qualifications. It is better to leave the general principles of the legislation to operate. The Government should allow employers to get on with the job of providing the sort of safe work environment that this Bill envisages.

**The Hon. C.J. SUMNER:** The Government opposes the amendment, which is the same as the Democrat amendment. I guess that we will not win the day, but the Government does not feel able to support this amendment. Under present construction safety regulations made under the current Act safety supervisors are required to be appointed at sites, where more than a prescribed number of workers are employed, to supervise safety aspects of the job. It should also be noted that there are requirements under existing legislation to appoint first aid people, nursing people and medical practitioners, depending on the size of the establishment. This Bill would allow similar regulations to be drawn up with respect to appointments but in addition could extend to the appointment, in appropriate circumstances, of expert safety consultants. It is envisaged that the

need for this would be justified in those industries with poor safety performance records. Very large employers might be required to appoint such persons full time. Smaller employers would obviously be able to appoint them on a part-time basis. I reject the amendment.

**The Hon. I. GILFILLAN:** If I recollect correctly, the Opposition did not pick this amendment up in another place. Is it something that the Hon. Mr Griffin discovered?

**The Hon. K.T. Griffin:** I think that I picked it up.

**The Hon. I. GILFILLAN:** The Opposition came forward somewhat late in the day in this area. I accept that there may well be appropriate regulations so far as employment of nursing staff and other people in correct situations is concerned. It may be that that is something that could be detailed in the first schedule. I am not sure about that as I am not an adequate draftsman. However, the wording and expanse of this subclause is just too wide for us to accept and that is the reason for the amendment to delete it.

Amendment carried; clause as amended passed.

Clause 20—'Employers' statements for health and safety at work.'

**The ACTING CHAIRMAN (Hon. C.M. Hill):** We have two propositions in lines 22 to 27, one from the Hon. Griffin and the other from the Hon. Mr Gilfillan. I ask them to canvass those amendments together.

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

Page 12, lines 22 to 27—Leave out paragraph *(a)* and insert new paragraph as follows:

*(a)* prepare and maintain, in consultation with health and safety committees, the employer's employees and any health and safety representative who represents those employees, policies relating to occupational health, safety and welfare at the workplace;.

I think that it is appropriate that committees be involved in the development of these policies. It is important that employees be involved. That is where the matter should rest. My amendment removes reference to the registered association. As the clause reads at present there is a mandatory requirement for the employer to consult with the registered association on the application of the registered association. That may mean that, if there are members of a number of registered associations, an obligation to consult with all of them, even though they may have only a handful of employees. In the normal course one may expect that in some work environments employers will choose to have discussions about policies with registered associations, but I think that it is preferable to do it on that voluntary basis rather than making it mandatory. This amendment removes the mandatory nature of the involvement of registered associations.

**The Hon. I. GILFILLAN:** I move:

Page 12, lines 22 to 27—Leave out paragraph *(a)* and insert new paragraph as follows:

*(a)* prepare and maintain, in consultation with health and safety committees, the employer's employees and any health and safety representative who represents those employees, on the application of an employee, a registered association of which that employee is a member and, if the employer so decides, any other registered association nominated by the employer, policies relating to occupational health, safety and welfare at the workplace;.

We have attempted to insert a mechanism in the Bill which will enable registered associations to become involved in several matters but only upon the invitation of an employee and, in this case, an employer who invites them to do so. There is probably a very thin line between all three variations of this subclause, since the likely eventuality is that unions may very well be involved in all three when they have any number of employees in the workplace.

I can see the intention of the Hon. Mr Griffin's amendment. I make plain that our amendment envisages that unions or employer organisations will be involved, I hope on an enthusiastic and cooperative basis. The reason for the amendment is that we resist the implications of the Bill that a registered association has the right, without any qualification, to just become involved automatically. Therefore, our amendment varies from Mr Griffin's in that it spells out the fact that a registered association can become involved on the application of an employee, and for a registered association representing an employer the same will apply.

**The Hon. K.T. GRIFFIN:** I think that the Hon. Mr Gilfillan's amendments are really as bad as the Bill as it stands because what we really have is an obligatory involvement of any registered association of which employees are members. With respect to the Hon. Mr Gilfillan, I do not think that he effectively deals with the issue. I therefore strongly propose my amendment as being preferable to his.

**The Hon. C.J. SUMNER:** The Government cannot accept the amendment of the Hon. Mr Griffin. This would exclude registered associations from having a statutory right to be consulted in the preparation of occupational health and safety policies. The Bill only provides for a statutory right to be consulted, and the removal of the union movement, for instance, in the consideration of such policies is somewhat shortsighted, in our view, and ignores the positive contributions that unions can make—and, indeed, already make—to the formulation of such policies. While we probably prefer the Bill, we understand the realities of the situation and therefore would be prepared to acknowledge the Hon. Mr Gilfillan on this occasion.

The Committee divided on the Hon. K.T. Griffin's amendment:

Ayes (8)—The Hons J.C. Burdett, L.H. Davis, Peter Dunn, K.T. Griffin (teller), C.M. Hill, J.C. Irwin, R.I. Lucas, and R.J. Ritson.

Noes (9)—The Hons G.L. Bruce, J.R. Cornwall (teller), M.J. Elliott, M.S. Feleppa, I. Gilfillan, Carolyn Pickles, T.G. Roberts, G. Weatherill, and Barbara Wiese.

Pairs—Ayes—The Hons M.B. Cameron and Diana Laidlaw. Noes—The Hons. B.A. Chatteron and C.J. Sumner.

Majority of 1 for the Noes.

Amendment thus negatived.

The Hon. I. Gilfillan's amendment carried.

**The Hon. I. GILFILLAN:** I move:

Page 12—
Line 32—Leave out 'workers' and insert 'employees'.
Line 35—Leave out 'workers' and insert 'employees'.

Amendments carried; clause as amended passed.

Clause 21—'Duties of workers.'

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

Page 12, line 41—Leave out 'A worker' and insert 'An employee'.

Amendment carried.

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

Page 13, after line 2—Insert:

, and, in particular, shall so far as is reasonable—

*(c)* use any equipment provided for health or safety purposes;

*(d)* obey any reasonable instruction that his or her employer may give in relation to health or safety at work;

*(e)* comply with any policy relating to occupational health, safety or welfare applying at the workplace;

and

*(f)* ensure that he or she is not, by the consumption of alcohol or a drug, in such a state as to be a threat to his or her own safety at work or the safety of any other person at work.

It is important to provide that an employee shall, in addition to taking reasonable care to protect his or her own health and safety at work, avoid adversely affecting the

health or safety of others through any act or omission at work; that an employer shall, so far as is reasonably practicable, use any equipment provided for health or safety purposes, obey any reasonable instruction that his or her employer may give in relation to health or safety at work, comply with policies and ensure that he or she is not, by the consumption of alcohol or a drug in such a state as to be a threat to his or her own safety or the safety of any other person at work.

They are reasonable obligations to be placed on employees and, I think, complement the other provisions of the Bill so that both employers and employees have not only responsibilities for each other but for themselves and for others in the workplace. I do not think there can be any reasonable objection to this provision. One of the difficulties under workers compensation law is that there seems to be an inadequate emphasis on what might be loosely described as contributory negligence, where safety goggles or ear muffs or other protective equipment might be prescribed for the employee but the employee, for one reason or another, declines to wear or use that safety equipment.

Regrettably, in many instances the consequence of the employee's own decision, notwithstanding the requirement of the employer, is not given sufficient weight. Therefore, I think that the obligation specified in these amendments is appropriate.

**The Hon. I. GILFILLAN:** I move:

Page 13, after line 2—Insert:

, and, in particular, shall so far as is reasonable (but without derogating from any common law right)—

*(c)* use any equipment provided for health or safety purposes;

*(d)* obey any reasonable instruction that his or her employer may give in relation to health or safety at work;

*(e)* comply with any policy published or approved by the commission that applies at the workplace;

and

*(f)* ensure that he or she is not, by the consumption of alcohol or a drug, in such a state as to endanger his or her own safety at work or the safety of any other person at work.

The Hon. Mr Griffin's amendment and mine are almost identical, but I point out that I have included '(but without derogating from any common law right)' at the top of my amendment. It may be only a minor variation, but I think it is fair I point it out. I suspect that it makes the amendment more comfortable for employees to accept. I do not consider that there should be any risk to a common law right if any common law right remains available to employees in subsequent legislation. While there is, I think it should stand on an ordinary hearing devoid of being able to lean on these subclauses as a prevention for employees taking common law action. However, that may be a point for further debate later.

There have been some misgivings by employees about these conditions, but I feel the amendment is an important addition to the Bill, to provide specific direction and encouragement for employees to comply and cooperate with measures for their safety. Members may have picked up an article that appeared in the *Advertiser* on 20 November under the heading 'Doctors warn on use of safety goggles'. This is a simple example, but one I am sure that most members are aware of; that there are extraordinarily high rates of accidents by people not protecting their eyes when they are hammering steel, for example. The article points out—and this is interesting—that the bigger proportion of these accidents occurs with subcontractors, farmers or home handymen. That being the case, the article states:

Industry is generally aware of the dangers of eye injury and issues workers with protective spectacles.

I commend my amendment only because of the minor difference I outlined.

**The Hon. C.J. SUMNER:** The Government would reject both these amendments on the basis that the obligation is in the Bill as presented by the Government on a worker to take reasonable care for the protection of his own safety. There may be some dangers in listing detailed responsibilities as they could be used by employers to pressure their employees into believing that they are under strict obligations to comply with all their employer's instructions on safety matters, even where that may subject the employee to undue risk. As I seem to have to make a choice, I will choose the Hon. Mr Gilfillan's amendment.

**The Hon. K.T. GRIFFIN:** I do not accept what the Attorney-General has indicated. It seems to me to be perfectly reasonable that these paragraphs be itemised. If safety equipment is necessary for the protection of an employee then the employee should wear or use the safety equipment. I do not accept the reservation that the Attorney-General indicated. I am not sure exactly what is intended by the reference to the paragraphs not derogating from any common law right. I presume that it is in relation to workers compensation, but I do not think that is clear from the amendment drafted by the Hon. Mr Gilfillan. In any event, I do not think it has any substance. I persist with my amendment. If it is not carried I will not call for a division in the light of the indication from the Hon. Mr Gilfillan. At least a fall back position is to support the Hon. Mr Gilfillan's amendment.

**The Hon. I. GILFILLAN:** It would be a fairly comfortable fall back position because my amendment is the same as the Hon. Mr Griffin's amendment. I like that cautious use of language. However, it provides me with an opportunity to make a point. It is not a matter of one side beating the other. The aim of the Bill is to prevent injury. Employees should be encouraged to comply with sensible safety requirements, otherwise those requirements are counterproductive. I become very irritated with this thing about employees distrusting employers. We are seeking to protect the health of employees. We are putting the boot into the employer with a thumping penalty and there is an obligation to follow the instructions in this Bill. The same applies to the others. It is a two-sided exercise and this amendment is a significant contribution.

The Hon. Mr Griffin's amendment negatived.

The Hon. Mr Gilfillan's amendment carried.

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

Page 13, after line 3—Insert new subclause as follows:

(2) In determining the standard of care applicable to a worker whose native language is not English and who is not reasonably fluent in English regard must be had to—

*(a)* whether information relating to occupational health and safety has been reasonably available to the worker in a language and form that the worker should reasonably understand;

and

*(b)* whether instruction or training of the worker (if any) has been carried out in a language and form that the worker should reasonably understand.

This amendment proposes to insert new subclause (2) in the provision that prescribes the duties of workers under the legislation. The Government considers that a case has been made out for special mention for the position of immigrants under this clause. This amendment highlights the fact that, in determining the standard of care that should be expected of a person of non-English speaking background, regard must be had to whether information and training have been provided to him or her in a language and form that can be understood.

This amendment recognises important problems in industry. It is often the case that immigrant workers are captured in a linguistic ghetto for most of their working lives. This can arise because of low levels of formal education in an individual's native language or because of minimal understanding of English. This means that a worker may not be able to understand even the most basic aspects of his or her duty to take reasonable care under this legislation unless information is made available in a language and form that can be understood by the worker. This will have to be taken into account when determining the person's position under this clause. The amendment seeks to address this problem.

**The Hon. K.T. GRIFFIN:** I do not oppose the amendment and I subscribe to the principle of it. However, I raise a reservation about the importing into the Bill of different standards of care based on different criteria. Presumably the Attorney-General has thought that through. It really means that there may be other circumstances which may affect the standard of care; if language is one of them, what other criteria might be sought to be included to distinguish the levels of standard of care required of employees? I make that point only by way of comment on the provision but indicate that I do not oppose it.

**The Hon. I. GILFILLAN:** We support the amendment.

Amendment carried; clause as amended passed.

Clause 22—'Duties of employers and self-employed persons.'

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

Page 13, line 8—Leave out 'a worker' and insert 'an employee'.

Amendment carried; clause as amended passed.

Clause 23 passed.

Clause 24—'Duties of manufacturers, etc.'

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

Page 13, lines 23 to 25—Leave out the word 'and' and subparagraph (ii).

Page 14, lines 1 and 2—Leave out the word 'and' and paragraph *(b)*.

This clause deals with the duties of manufacturers, designers, importers and suppliers of plant for use at work. I refer to subclause (1) *(a)* and *(b)* and subclause (2). I have moved my amendment mainly because I want to elicit from the Attorney what sort of parameters are envisaged in this standard. For example, I will take the simple case of a person who manufactures a chair on wheels for use as a chair. It is sound, carries the person's weight, rolls smoothly, will not tip back suddenly and is generally adequate for that purpose. In some places the dangerous practice occurs of standing on a chair to reach a high shelf, and it might be reasonably foreseen that some employee may stand on a chair for that purpose. I seek information about the standard of care to ensure that we do not have an unduly onerous burden placed on manufacturers that will subject them to a prosecution and a Division 2 fine, which is a maximum of $50 000. I refer to the subjective test in paragraph *(a)* (ii), because it concerns me.

**The Hon. C.J. SUMNER:** The Government opposes the amendment, which removes a particularly important proviso in the provision of safe erection and installation of plant and also in the provision of safe plant. These items must be safe when they are properly used and maintained and when subjected to reasonably foreseeable forms of misuse. It is the latter that the amendment seeks to remove. Whilst it is presumed that all people operate to the standards laid down by the manufacturer, it is absurd to not take account of likely behaviour on the part of the user or worker. In effect, proper use can be an extremely difficult concept to define in practice.

In the United Kingdom, where this equivalent section has been in operation for 12 years, such difficulties arising out of the drafting have led to proposals for amendment of the section along the lines of the clause in the Government's Bill to cover reasonably foreseeable forms of misuse. In the United Kingdom it was found it was too easy for the supplier to escape legal consequences where any degree of operator error could be established, however unsafe the goods were in the first place.

I refer to a consultative document put out by the Health and Safety Commission in the United Kingdom dealing with proposed changes to section 6 of the Health and Safety at Work Act 1974. They comment on the words 'when properly used' which are in the provision but which would in effect be the only proviso in clause 24 (1) *(a)*, if the honourable member's amendment is agreed to.

It would mean that the obligation on the manufacturer, importer or supplier is to ensure that it is safe only when properly used. The problem has been the definition of 'when properly used' in those circumstances. The comments from the United Kingdom paper that I have referred to are as follows:

> In recent years the subsection's force has been weakened by the interpretation of the words 'when properly used' with the result that it can be difficult to take enforcement action against unsafe goods until their faults have been demonstrated in an accident. Between 1980 and 1983, 90 per cent of the cases taken and lost by the factory inspectorate under section 6 (1) *(a)* turned on this phrase. It has therefore become too easy for suppliers to escape legal consequences where any degree of operator error can be established, however unsafe his goods might have been in the first place.

The Government's Bill is a reasonable proposition and would overcome the sorts of problems that apparently have been exhibited in the United Kingdom.

**The Hon. I. GILFILLAN:** The rate of accidents involving misuse of plant and equipment is substantial. It is important that there is an encouragement to those who are designing and manufacturing machinery and plant that they do have a safety margin built in. If we are to treat this matter seriously, it has to be regarded in the light of the Government's clause. I remind members that equipment and plant that has been properly used, particularly in the rural scene where I have some personal experience, has a low accident level. It is the area where misuse is so often the case with the failure of plant to have been properly protected and dangerous factors arising from that. I think the Government's wording is satisfactory.

Amendment negatived; clause passed.

Clause 25—'Duties applicable to all persons.'

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

Page 14, line 28—Leave out 'worker' and insert 'employee'.

Amendment carried; clause as amended passed.

Clause 26—'Preliminary.'

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

Page 15, line 4—Leave out 'worker' and insert 'employee'.

Amendment carried.

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

Lines 5 to 7—Leave out paragraph *(a)*

This clause comes under Part IV dealing with health and safety representatives and committees. The clause seeks to identify who are not employees for the purpose of appointment of health and safety representatives and for membership of health and safety committees. Paragraph *(a)* means that a regulation can be made which effectively identifies what class of self-employed contractors might be entitled to be regarded as employees for the purposes of this part.

It seems to me to be more appropriate, in line with the Liberal Party's general view on this legislation, that no reference is made to such self-employed contractors. They are not employees and, as contractors, it is not appropriate

to deem them to be employees for the purposes of this part of the Bill. So my proposal is to delete paragraph *(a)*. Later, I will deal with a redefinition of paragraph *(b)* in respect of managers. However, I will debate that issue after we have disposed of paragraph *(a)*.

**The Hon. I. GILFILLAN:** I can only guess what is in the mind of the Government but it probably foresees that a self-employed contractor under certain circumstances is appropriate to be considered as an employee in so far as that person may well want to be involved in the safety committee or even be considered as a safety representative. I admit that that is only a guess because we have not yet heard from the Government.

**The Hon. C.J. SUMNER:** The Hon. Mr Gilfillan has got it right. We reject the Hon. Mr Griffin's amendment for the reasons so eloquently put by the Hon. Mr Gilfillan.

**The Hon. K.T. GRIFFIN:** The Hon. Mr Gilfillan is correct and, to some extent, I am incorrect. The deletion of all of paragraph *(a)* is consequential on an earlier amendment that was lost. Accordingly, I seek leave to withdraw my amendment with a view to moving another.

Leave granted; amendment withdrawn.

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

Page 15, line 5—Leave out all words after 'contractor'.

**The Hon. C.J. SUMNER:** The Government's argument is still the same, and we reject the amendment.

Amendment negatived.

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

Page 15, lines 8 to 11—Leave out paragraph *(b)* and insert new paragraph as follows:

*(b)* a person employed in a managerial capacity in relation to whom a majority of employees at the particular workplace have resolved that on account of the nature of his or her work as a manager it is inappropriate to treat the person as an employee for the purpose of this Part;

I think that paragraph *(b)* is an outrageous provision because it gives a trade union the right to say who is or who is not an employee. I am pleased that at least the Hon. Mr Gilfillan has recognised (although his amendment is in a different form) the outrageous nature of it. My amendment means that, for the purposes of this definition, persons in a managerial capacity are employees unless they are voted out by a majority of employees at a workplace.

The Hon. Mr Gilfillan's amendment approaches the matter from a different angle and provides that an employee does not include a person in a managerial capacity unless a majority of employees has resolved to treat that person as an employee for the purposes of Part IV. I prefer the knocking-out provision than the knocking-in provision of the Hon. Mr Gilfillan, so I will obviously vote for my own amendment.

**The CHAIRPERSON:** I do not quite understand because clause 26 begins 'For the purpose of this Part, "employee" does not include,' and the honourable member is saying it does not include 'a person employed in a managerial capacity in relation to whom' etc.

**The Hon. K.T. Griffin:** That is all right.

**The CHAIRPERSON:** There is a double negative there.

**The Hon. K.T. GRIFFIN:** Yes. A person employed in a managerial capacity is not an employee for the purposes of this Part if a majority of the employees have said that that person is not an employee for the purposes of the Part.

**The Hon. I. GILFILLAN:** I move:

Page 15, lines 8 to 11—Leave out paragraph *(b)* and insert new paragraph as follows:

*(b)* a person employed in a managerial capacity unless a majority of employees at the particular workplace have resolved that it is reasonable to treat the person as an employee for the purposes of this Part;.

The Hon. Mr Griffin has accurately compared the two amendments. The reasons why I put mine forward in this form are two: first, that managers in general would not be viewed automatically by the major body of employees as being, *ipso facto*, in the same group for the perspective of this particular legislation. However, in certain circumstances, the manager may well be an acceptable and welcome ingredient in a group of employees. Therefore, I think that the initiative should be for employees to make that decision. The other reason why I am reluctant to support the Hon. Mr Griffin's amendment is that a knocking out is a somewhat hostile act and I think that it may unnecessarily engender ill feeling where it did not exist before. That is another factor that we should consider in this legislation right the way through, so I prefer my amendment.

**The Hon. C.J. SUMNER:** The Government accepts neither amendment. It should be recognised that management would be well represented on safety committees and already have a significant influence on safety matters in the workplace. There is the possibility of the amendment placing undue pressure on workers who are in a non-managerial position to vote to allow a person in a managerial position to stand. However, obviously an amendment in some form will pass, so I prefer the Hon. Mr Gilfillan's amendment.

**The Hon. K.T.GRIFFIN:** I was disappointed to hear the Hon. Mr Gilfillan express his preference in the way he did, because what it means is that persons who are in some managerial capacity in a workplace have no rights under this Bill unless other employees say that they can. I find that rather curious when what we are trying to do is provide an occupational health, safety and welfare system in the workplace which is of a cooperative nature between employers and employees but which is quite obviously, according to the Hon. Mr Gilfillan's amendment, excluding people who are equally employees. I regard it as quite unreasonable that managers or persons in a managerial capacity—not necessarily managers as such, but people exercising managerial responsiblity—should not, for the purposes of safety committees and safety representatives, have any rights under this part of the Bill. That is really what the Hon. Mr Gilfillan is proposing.

The Hon. K.T. Griffin's amendment negatived.

The Hon. I. Gilfillan's amendment carried; clause as amended passed.

Clause 27—'Health and safety representatives may represent work groups.'

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

Page 15, line 18—Leave out 'workers' and insert 'employees'.

Amendment carried.

**The CHAIRPERSON:** There are two amendments relating to lines 21 to 34, one from the Hon. Mr Griffin and one from the Hon. Mr Gilfillan. I am happy that they be canvassed together.

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

Page 15, lines 21 to 34—Leave out subclauses (3) and (4).

Subclauses (3) and (4) deal with designated work groups. Where a worker at the workplace is a member of a registered association, the work groups are to be formed by agreement between the employer and the trade union or, if workers are members of various trade unions, then by agreement between the employer and those trade unions jointly. Where no worker at the workplace is a member of a trade union then the work groups are to be formed by agreement between the employer and the employees. I find it quite outrageous that the trade union again dictates the formation of the designated work group. I see no reason at all why the employees at the workplace should not make a request for the formation of a designated work group and that it is a

matter between employer and employees. It may be peripherally that a registered association becomes involved, or even directly, but that is something which ought not to be a mandatory requirement under this clause. I am pleased that at least the Hon. Mr Gilfillan recognises the objectionable nature of subclause (3). Subclause (4) provides that where an employer is requested by a worker or a trade union representing one or more workers at a workplace to agree to the forming of a work group then the employer shall respond to the request within 14 days of its receipt.

My scenario is to delete subclauses (3) and (4) and add additional subclauses which provide that, where an employer is requested by an employee to form one or more work groups, the employer is to respond within 14 days of the receipt. Where the employer fails to respond to such a request, or the employee is dissatisfied with the actions of the employer, then the matter may be referred to the commission—which was intended to be the Occupational Health and Safety Commission but, in the light of my loss of the amendment proposing the removal of the Industrial Commission, is now to be the Industrial Commission which resolves those sorts of disputes. So, I have a different scenario from that of the Hon. Mr Gilfillan. I prefer my scenario, because it remains an employer-employee responsibility.

**The Hon. I. GILFILLAN:** I obviously support that amendment as it forms part of mine, and I assume that will not interfere with the way you want to deal with them. In speaking in general terms to the matter, it is unfortunate that this Bill was brought up in the way in which it was worded. I have looked at it and analysed it enough to have lost the original indignation to which the Hon. Mr Griffin occasionally refers as outrage.

**The Hon. K.T. Griffin:** I haven't lost it.

**The Hon. I. GILFILLAN:** I do not know if there is any point in maintaining one's rage: it might get you on the Max Gillies show. More importantly, though, the wording has almost been designed to provoke the employers, and I think that was very short sighted. It is a bludgeon attempt and it has produced the reaction which I think anyone with any sensitivity would have predicted: it has immediately got the employers offside and very suspicious. That is quite unfortunate and unnecessary.

It is also quite ridiculous to think that those making decisions and planning for work groups should be deprived of the skills of the unions and their knowledge. Therefore, my amendment seeks somewhat belatedly to present a wording which is amenable. In most cases, the unions will be involved because an employee who is a member of a particular union has asked them to be involved, and they will be consulted. I think that the work groups and the structure of the work groups will be more effective because of that. Subclause (4) is a bit of muscle flexing; it does not appeal to me as it is.

**The Hon. C.J. SUMNER:** The Government opposes these amendments, as they would remove trade unions from having any role in the formation of designated work groups and place this role in the hands of the employer. Such an approach is quite contrary to the workers having some control and say over their own health and safety, and should be rejected. That is with respect to the Hon. Mr Griffin's amendment. As to the Hon. Mr Gilfillan's amendment, in the Government's view the Bill is preferable, but, once again, I have a choice of two propositions, one of which I have no choice but to accept in the light of the numbers. Once again, my preference is for that of the Hon. Mr Gilfillan.

Amendment carried.

**The Hon. I. GILFILLAN:** I move:

Page 15, lines 21 to 34—Insert new subclauses as follows:

(3) Designated work groups shall be formed by agreement between the employer and the employees or a person appointed by the employees.

(4) If an employee is a member of a registered association, that registered association shall, at the request of the employee, be consulted in relation to the formation of designated work groups at the workplace.

**The Hon. K.T. GRIFFIN:** I do not have the numbers on this and do not propose to call for a division. I prefer the form I am proposing by way of amendment but should say, at least, that the Hon. Mr Gilfillan's proposal is halfway towards being correct.

Amendment carried.

**The CHAIRPERSON:** The Hon. Mr Griffin has amendments to line 35.

**The Hon. K.T. GRIFFIN:** One amendment is no longer appropriate because I have lost the vote on my scheme and I do not propose to move the first one, but I will move the second. I move:

Page 15, line 35—After 'to' insert 'guidelines published by the Commission and'.

It seems to me that there need to be some guidelines, and we have already made provision for those in relation to the formation of work groups, and when they are formed it is appropriate to have regard to them.

**The Hon. I. GILFILLAN:** I support the amendment.

Amendment carried.

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

Page 15—
Line 36—Leave out 'workers' and insert 'employees'.
Line 38—Leave out 'workers' and insert 'employees'.
Page 16, line 1—Leave out 'workers'and insert 'employees'.

Amendments carried.

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

Page 16, lines 3 and 4—Leave out subclause (7) and insert new subclause as follows:

(7) Where an employer is requested by an employee to form one or more work groups at a workplace, the employer shall respond to the request within 14 days of its receipt.

This amendment seeks to reflect an obligation on an employer to respond to a request for the formation of a work group by an employee within 14 days of the receipt of the request.

**The Hon. I. GILFILLAN:** I support the amendment.

Amendment carried.

**The CHAIRPERSON:** On page 16, lines 5 to 11, an amendment is on file by the Hon. Mr Griffin.

**The Hon. K.T. GRIFFIN:** In light of the fact that under the Bill as now amended an employer does not form the work groups but they are formed under the Hon. Mr Gilfillan's earlier amendment by agreement between the employer and employee, I think it is appropriate that I not move my amendment but indicate my support for the amendment of the Hon. Mr Gilfillan.

**The Hon. I. GILFILLAN:** I move:

Page 16, lines 5 to 11—Leave out subclause (8) and insert new subclause as follows:

(8) Where—

*(a)* agreement cannot be reached under subsection (5); or

*(b)* an employer fails to respond to a request in accordance with subsection (7),

an employee or the employer may refer the matter to the Industrial Commission.

Amendment carried.

**The Hon. K.T. GRIFFIN:** I indicate that my foreshadowed amendments to lines 12, 13 and 16 are no longer appropriate and I therefore will not seek to move them. I move:

Page 16, lines 23 and 24—Leave out ', the workers and any registered association of which a worker at the workplace is a

member,' and insert 'and any interested employees at the workplace'.

This amendment is consequential on earlier amendments which have been passed and which remove the predominant influence and position of registered associations or trade unions.

**The Hon. I. GILFILLAN:** I support the amendment.

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

Amendment carried; clause as amended passed.

Progress reported; Committee to sit again.

## MOTOR VEHICLES ACT AMENDMENT BILL (No. 3)

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

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

*That this Bill be now read a second time.*

Due to the lateness of the hour I seek leave to have the explanation of the Bill inserted in *Hansard* without my reading it.

Leave granted.

### Explanation of Bill

The purpose of this Bill is threefold, namely, to prevent the manipulation of the motor registration processes to avoid fees, to adopt a graduated heavy vehicle driver licensing scheme and to make amendments consequential upon the introduction of the new Commonwealth licensing system for hauliers operating solely in interstate trade.

Under the present provisions of the Motor Vehicles Act, the registration processes can be manipulated to reduce fees by the renewal of registration at the beginning of a month, usually some three weeks after the expiry date, with the effect that seven months registration is achieved for the price of six months registration, or 13 months registration for the price of 12 months.

Also, by cancelling the registration of a motor vehicle, followed by an immediate re-registration just prior to a fee increase in registration fees or third party insurance premiums, a vehicle owner can defer the effect of the increases for nearly 12 months.

In relation to renewals at the beginning of a month, the Registrar of Motor Vehicles estimates that 20 per cent of all motor registrations made in the State occur after the expiry date. There is a large number of applicants who renew registration at the beginning of a month, usually some three weeks after the expiry date. There are, of course, persons who inadvertently overlook the renewal of a registration on the due date. Such practices represent an avoidance of large sums of money, both in registration fees and compulsory third party premiums.

In addition, a new registration period is calculated which involves a change to the register, incurring additional costs in clerical and computer time. The proposed amendments to the Act should eliminate these problems, whilst ensuring that a person who drives a vehicle between expiry and the date of renewal is still guilty of an offence.

The proposed graduated heavy vehicle licensing scheme has arisen out of the National Road Freight Industry Inquiry which was sponsored by the Commonwealth Government. At a meeting on 27 June 1986 the Australian Transport Advisory Council adopted a resolution which introduced a number of new classifications for drivers of heavy commercial vehicles.

The essential element of the scheme is the requirement that, before a person can be tested to drive a truck exceeding 14.8 tonnes gross vehicle mass limit, the person must be at least 19 years of age and have at least three years driving experience driving a rigid vehicle with a GVML of greater than 4.5 tonnes but less than 14.8 tonnes.

Similar requirements are required for drivers of heavy omnibuses. In the case of buses, the graduation point is a vehicle with a seating capacity exceeding 30 adult persons, including the driver.

To minimise the effect of the new classifications on the transport industry, it is proposed to retain all present classifications and to introduce the new classifications to drivers applying for licences from 6 January 1987.

Some existing drivers will have to have their licences endorsed with higher classifications, and these persons will be given six months (by virtue of an exemption in the regulations) in which to have their licences endorsed with the appropriate classifications.

Because the driver classification system is becoming increasingly complex and could be subject to the need for fairly rapid amendments, it is proposed to remove the detailed licence classifications from the Act and place them in the regulations.

The opportunity is taken to repeal those provisions of the Act that deal with registration of vehicles solely engaged in interstate trade. The repeal will be suspended until all existing State registrations have expired.

Clause 1 is formal.

Clause 2 provides for the commencement of the Act on a day to be proclaimed. Certain clauses may be suspended.

Clause 3 provides that the Registrar may register a vehicle for less than the usual six month or 12 month period where the previous owner cancels registration but applies for fresh registration before the expiry of the old registration period. (The regulations will deal with the question of the reduced registration fee payable in such a circumstance.) The Registrar is also given power to renew an already expired registration provided that the registered owner applies for renewal within 30 days, but it is made clear that late renewal does not mean that a vehicle is subsequently deemed to be registered between expiry and that renewal.

Clause 4 is a consequential amendment that makes it clear that if a registration is renewed within 30 days of expiry, the registration period is not interrupted.

Clause 5 repeals the section of the Act that provided for the registration, for a nominal fee, of vehicles engaged solely in interstate trade. This clause of the Bill, and also clause 6, will not come into operation until all current State registrations of interstate hauliers and buses have expired, thus leaving the new Commonwealth Act completely covering the field.

Clause 6 strikes out references to registration of interstate hauliers, etc.

Clause 7 provides that all licences must be endorsed with one or more of the prescribed classifications, thus paving the way for the whole question of licence classifications to be dealt with in the regulations.

Clause 8 is a consequential amendment—the matters covered by the deleted provisions will be included in the regulations.

Clause 9 expands the regulation-making power to cover prescribing licence classifications, providing for the classes of vehicle that any particular classification will authorise a person to drive, prescribing qualifications in relation to classifications and giving the Registrar a power to exempt a person from having to hold a particular qualification. Power is also given to make regulations for the fees that

will be charged for the functions to be performed by the Department of Transport for the purposes of the new Commonwealth Act.

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

## TOBACCO PRODUCTS (LICENSING) BILL

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

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

*That this Bill be now read a second time.*

Due to the lateness of the hour, I seek leave to have the explanation of the Bill inserted in *Hansard* without my reading it.

Leave granted.

### Explanation of Bill

The consumption of tobacco products is a significant health hazard. The evidence is now clear that cigarette smoking and other forms of tobacco consumption will substantially increase the risk that the consumer will be affected by a variety of diseases including some cancers.

The costs of these diseases is ultimately borne by the taxpayer through the hospital and health systems. The extra costs occasioned to the hospital and health systems by reason of the consumption of tobacco are considerable.

In the Government's view it is fair that consumers of tobacco products should make an appropriate contribution to State revenues to offset these increased costs. In the Government's view the source of tobacco products is irrelevant in this context. The ultimate burden on the taxpayer is not any different whether the tobacco is directly obtained from overseas, interstate or within the State.

Under the current Business Franchise (Tobacco) Act 1974 traders in tobacco products are required to be licensed and to pay fees on the bases of past sales. By this means, there is an appropriate contribution to State revenues. Furthermore, the increased cost of tobacco products have the important effect of providing a substantial inducement to consumers not to start smoking or to cease smoking.

The Council will be aware that some tobacco traders have entered into artificial arrangements so as to avoid their obligations to pay tax under the current law. These arrangements have no other justification than to attempt to bring their trading within the exemptions under the current Act. These exemptions are designed to reflect the protection afforded to interstate traders by section 92 of the Constitution, which guarantees free trade between the States. In reliance upon the exemptions and upon section 92, these traders have refused to take out a State licence and are selling tobacco without paying any State fees.

The operations of these traders are having three significant effects. First, tobacco products are being sold at substantially less than the ordinary market price. This has the effect that persons, and in particular minors, can afford to purchase and consume more tobacco products. This undermines the Government's health initiatives in respect of cigarette smoking.

Secondly, the interstate traders are enjoying an unwarranted and unreasonable trading advantage over ordinary traders who are complying with the law. The interstate traders do not hold a licence and do not pay a fee. Ordinary traders are losing substantial business.

Thirdly, there is a prospect of a substantial loss of revenue to the Treasury if ordinary traders are forced into similar schemes to remain competitive. Consumers will not be making the appropriate contribution to offset the increased hospital and health costs occasioned through tobacco use.

The Government cannot permit these problems to continue. The current Bill is designed to overcome these problems and to ensure that tax is paid on all tobacco products that are consumed in this State.

To properly understand the Bill, it is necessary to understand the limitations upon the constitutional power of the State Parliament. Under section 90 of the Commonwealth Constitution the State cannot impose a tax upon the trade in goods where that tax is determined upon the quantity, value or other attribute of the goods. Under section 92 of the Constitution the State cannot burden interstate trade and cannot discriminate against interstate traders. Proceedings which would test the application of section 92 to the current Act would have to be determined in the High Court and would necessarily take considerable time. The Government cannot afford to await the outcome of normal judicial process because it will be local traders who suffer in the meantime.

The Bill is intended to produce a uniform and consistent licensing scheme within the constitutional limitations that face the State. The Bill repeals the current Act and provides for the following:

- The licensing of tobacco traders is voluntary. This is necessary to ensure that the scheme does not discriminate against either interstate or intrastate traders.
- No licensing fee in respect of past sales is payable where a tobacco trader purchases tobacco products from another tobacco trader. For example, where a licensed trader engaged in retail sales purchases the tobacco from a licensed trader engaged in wholesale sales then the retailer does not pay a licence fee in respect of past sales.
- The licensing fee for past retail sales is increased from 25 per cent to 30 per cent. This is because it is now voluntary for wholesalers to be licensed and there is a possibility that wholesalers may not be licensed. This would result in considerably more administrative expenses in collecting licence fees from retailers. The increased rate is to reflect that increased cost.
- Where tobacco products are purchased from an unlicensed trader then the consumer is obliged to have a licence to consume those tobacco products.
- An unlicensed trader who sells tobacco products by retail is obliged to erect signs and to obtain and keep various records relating to such sales. These obligations upon the unlicensed trader are only incidental to the trade, are reasonable regulation of that trade and in some instances only apply after the trade is completed. The obligations are designed to ensure that the consumer is fully aware of the obligations cast upon the consumer, at the time the consumer purchases the tobacco products.

It can be seen that a tobacco wholesaler is under no greater obligation than a wholesaler under the current Act. Indeed, the wholesaler is under a lesser obligation because the licence is voluntary. Similarly, a licensed retailer who purchases from a licensed wholesaler is under no greater obligation than under the current Act. However, a licensed retailer who purchases from an unlicensed wholesaler will have an increased licensed fee for past sales. An unlicensed retailer will not be liable to pay any licence fee but will be obliged to erect signs and to obtain and keep certain records.

A consumer who purchases from a licensed retailer will be under no greater obligation than at present. However, a consumer who purchases from an unlicensed trader will be under an obligation to hold a licence or will be subject to a civil penalty.

The Government regrets the necessity for this measure. The Premier warned last month that the Government may need to act in this matter and expressed the hope that the warning would be sufficient to persuade those who are avoiding their obligations of our determination to ensure that such tax dodging was stopped. That hope has not been fulfilled.

The Government has no wish to impose extra burdens on consumers. The Government hopes that wholesalers and retailers will take out the relevant licences just as the vast majority of them currently do. The Government hopes that consumers will only purchase from licensed traders. If consumers do only purchase from licensed traders then they are under no greater obligation than they are at present.

However, the Government cannot permit the current situation to continue. The current situation puts at risk the livelihood of hundreds of small businesses, the success of an important health initiative and the Government's budget strategy.

The Bill produces a uniform and non-discriminatory scheme designed to ensure that a tax upon tobacco products is payable and collected at some point in the chain from the wholesaler to the consumer.

In these circumstances, the Government is confident that tobacco consumers and tobacco merchants will recognise the need for this legislation and will cooperate in its implementation.

Clauses 1 and 2 are formal.

Clause 3 repeals the Business Franchise (Tobacco) Act 1974.

Clause 4 defines terms used in the Bill.

Clause 5 relates to grouping of tobacco merchants. Without a provision of this sort it would be possible for a group of tobacco merchants who were licensed to reduce or avoid licence fees. Licence fees are calculated by reference to an antecedent period. Members of a group can take turns from month to month at being the selling arm of the group with the result that each member does not sell any products during one or more months of the cycle. It is then a matter of organising the scheme so that the month which determines the amount of the licence fee for a particular member is a month in which that member had no sales.

Clause 6 provides that the Act will apply to persons outside the State who dispatch tobacco products into the State. Any other business such a person carries on out of South Australia is irrelevant and is excluded by subclause (2).

Clause 7 provides that the Act will bind the Crown.

Clause 8 requires that a person who consumes a tobacco product must either possess a consumption licence or have purchased the product from a licensed tobacco merchant. Subclause (2) excuses those who, whilst outside the State, purchase a tobacco product and have not consumed it when they enter the State. Paragraph *(b)* excuses a person who receives the product as a gift. The definition of 'to consume' in clause 4 includes to give a tobacco product and it is therefore unnecessary to require a contribution from the donee.

Clause 9 sets out the fees for a consumption licence. The amount of the fees is based on the average consumption by consumers of tobacco products in this State.

Clause 10 provides that a tobacco merchant may hold a licence but makes it clear that he is not obliged to do so.

Clause 11 provides for restricted and unrestricted licences. The term of an unrestricted licence is one month. The term of an unrestricted licence can be extended by automatic renewals up to 12 months.

Clause 12 sets out requirements in relation to a tobacco merchant's licence.

Clause 13 prescribes the fees payable in respect of a licence. Where an applicant had not carried on business in the relevant period subclause (3) enables the Commissioner to assess the licence fee based on his estimate of the scale of the business that the merchant would have carried on during the relevant period if he had been in business. Subclause (8) provides that sales of imported tobacco products direct to consumers may be regarded as wholesale sales for the purpose of determining fees.

Clause 14 provides for the basis on which tobacco products are to be valued.

Clause 15 requires an unlicensed merchant to obtain a declaration from customers who purchase tobacco products. If the customer has a consumer's licence the declaration must be in form 1 of schedule 1. If he does not then the declaration must be in form 2 of the schedule. Subclause (3) requires the merchant to provide the Commissioner with a monthly return.

Clause 16 requires an unlicensed tobacco merchant to display a notice in his premises that he is unlicensed and stating that purchasers of tobacco products must sign a declaration and must have a consumers licence to lawfully consume tobacco products.

Clause 17 requires notification of the place at which an unlicensed merchant carries on business.

Clauses 18 and 19 are administrative provisions.

Clause 20 enables the Commissioner to review a decision.

Clause 21 provides for appeals to an appellate tribunal.

Clause 22 sets out powers of inspection.

Clause 23 provides immunity where an officer acts honestly.

Clause 24 is a secrecy provision.

Clause 25 enables the Commissioner to obtain from a tobacco merchant or his agent or employee written information relating to dealings in tobacco products.

Clause 26 provides for verification of information contained in an application, declaration or return by declaration.

Clause 27 requires tobacco merchants to keep records.

Clause 28 makes it an offence to make a false or misleading statement in an application, declaration or return.

Clause 29 is a provision against holding out.

Clause 30 requires licensed wholesalers to endorse invoices with the wholesaler's licence number.

Clause 31 relates to offences under the Act.

Clause 32 is an evidentiary provision.

Clause 33 provides for regulations.

Schedule 1 sets out the form of declarations that must be obtained by an unlicensed merchant when selling to a consumer.

Schedule 2 sets out transitional provisions.

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

## ADJOURNMENT

At 11.5 p.m. the Council adjourned until Thursday 27 November at 2.15 p.m.