## LEGISLATIVE COUNCIL

Tuesday 11 August 1987

**The PRESIDENT (Hon. Anne Levy)** took the Chair at 2.15 p.m.

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

### PUBLIC WORKS COMMITTEE REPORTS

**The PRESIDENT** laid on the table the following reports by the Parliamentary Standing Committee on Public Works, together with minutes of evidence:

Mount Gambier Woodroom.

Dry Creek trunk Sewer Duplication (Stage II).

Pimba-Olympic Dam Road.

Ordered that reports be printed.

### PAPERS TABLED

The following papers were laid on the table:

By the Minister of Health, on behalf of the Attorney-General (Hon. C.J. Sumner):

*Pursuant to Statute—*

Local and District Criminal Courts Act 1926—Local Court Rules—Commercial Arbitration Applications.

Workers Rehabilitation and Compensation Act 1986—Regulations—Claims and Registration.

By the Minister of Health, on behalf of the Minister of Consumer Affairs (Hon. C.J. Sumner):

*Pursuant to Statute—*

Land Agents, Brokers and Valuers Act 1973—Regulations—Sale of Small Business Exemptions.

By the Minister of Health (Hon. J.R. Cornwall):

*Pursuant to Statute—*

Fisheries Act 1982—Regulations—General Fishery—Fees.

Planning Act 1982—Crown Development Report—Gepps Cross Hockey/Lacrosse Stadium.

Random Breath Testing Operation and Effectiveness—Report, 1986.

River Murray Commission—Report, 1986.

By the Minister of Tourism (Hon. Barbara Wiese):

*Pursuant to Statute—*

Roseworthy Agricultural College Statutes.

Technical and Further Education Act 1976—Regulations—Principals' Leave and Hours.

By the Minister of Local Government (Hon. Barbara Wiese):

*Pursuant to Statute—*

Corporation of Mount Gambier—By-law No. 7—Bees.

### MINISTERIAL STATEMENT: WOMEN'S SHELTERS

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

Leave granted.

**The Hon. J.R. CORNWALL:** I wish to advise the Council that following completion of the review of the management and administration of women's shelters in South Australia a number of important recommendations have been made to the Government. Members will recall that I announced the review in a ministerial statement on 26 November 1986. The review was necessary because of serious concerns about the administration of some women's shelters, particularly their financial management and accountability. The committee of review, chaired by Mrs Judith Roberts, and assisted by an independent consultant, Ms Harrison Anderson, has submitted its report to me. I endorse the committee's expectation that the report will help to consolidate a sound administrative and financial basis for women's shelters in South Australia and enhance the provision of services to women and children in crisis. I seek leave to table the report.

Leave granted.

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

That the report be authorised to be published.

Motion carried.

**The Hon. J.R. CORNWALL:** As members will see, the report is critical of a number of deficiencies or unacceptable practices in the administration of women's shelters. It lists some of the factors which led to the review including persistent deficits among shelters and the Department for Community Welfare's difficulty in trying to monitor spending by shelters. At the beginning of the review there were six shelters with deficits: Para Districts ($13 263), Port Augusta ($34 595), Bramwell House ($361), Christies Beach ($19 150), Irene ($5 908) and North Adelaide ($4 530). Three of these—Christies Beach, North Adelaide and Port Augusta—have been accumulating deficits since 1981-82. According to the committee, the seriousness of the deficit situation was reinforced by the knowledge that previous deficits had been largely paid out in 1983-84.

Shelters have always asserted that deficits are due to inadequate funding but, as the report points out, only half the shelters have deficits and some have never had a deficit. The committee rightly concludes that funding through the Supported Accommodation Assistance Program (SAAP) must be based on an identified process, including ongoing evaluation of shelter services. It describes the past use of 'political strength and ingenuity' in the shape of sit-ins, demonstrations and skilful media contact to elicit more funding as 'clearly an unsuitable means of disbursing public funds' and certainly an unacceptable way of planning and providing services. The committee recommends that the management committees of women's shelters be responsible for remaining within their negotiated budgets and that the signing of financial agreements, in accordance with the Supported Accommodation Assistance Program, be a prerequisite for receiving SAAP funds. In fact, the department's insistence that funding was contingent on the signing of a financial agreement was one of the major precipitating factors which led to the review.

The report says that in the past the Department for Community Welfare responded to serious levels of deficit amongst shelters and threats of closure by shelters with what it describes as 'the ineffective and indeed self-defeating strategy of making advances on quarterly grants'. On the other hand, inconsistency in accounting practices and standards by some shelter managements made it difficult for the department to respond more appropriately. Without minimising the problems identified in the report, I want to stress the need to keep these criticisms in perspective. The committee has emphasised that the majority of South Australian women's shelters are well managed facilities. With dedicated and compassionate staff and responsible management, they provide what the report describes as 'an essential service for women and children suffering the devastating effects of violence, rape, incest, homelessness and poverty'.

As Minister of Community Welfare, I agree with this assessment. The failure on the part of some shelters to comply with the reasonable requirements of public accountability for public funds must not be allowed to obscure the overall success of South Australia's SAAP program. I am acutely aware of the difficulties faced by responsible management and staff of women's shelters as they established and developed services for women and children in crisis. I

am equally sensitive to the dilemma faced by the Department for Community Welfare, seeking to be supportive and understanding on the one hand and aiming to ensure proper accountability on the other. The committee points out that as the level of shelters expertise and provision of Government funding has grown, so too have the expectations of Government administrators for professional standards in the areas of management, administration, service delivery and evaluation of programs.

The persistent problem with some shelters maintaining deficits, blaming those deficits on inadequate funding and then demanding additional funding to discharge their debts, made it essential that shelters sign financial agreements guaranteeing their accountability. The Commonwealth stipulated—and the South Australian Government concurred—that deficits would only be paid out if shelters signed. Although most signed and began with a clean slate, a minority held out. The committee's comments on this fundamental issue highlight the difficulty experienced by the Department for Community Welfare in being fair but firm. The introduction of financial agreements (quoting from the report) was:

> ... not a new idea invented as a punitive measure against women's shelters in particular. Such agreements have been standard practice in the non-government community welfare grants and family support programs. Controversy arose because women's shelters have been treated differently from other groups in the past and are now being required by the department to abide by the same accountability standards as other organisations.
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> Intervention (in the form of the financial agreement), after a protracted period of a 'hands off' policy on the department's part, has inevitably been perceived by most of the shelter movement as new, different, coercive and discriminatory. This is not the case. It is simply a move to enforce standards of accountability which the community and the Government expect.

There is every indication, Ms President, that shelters now accept the need for financial accountability. The review committee found that the initial responses of shelters were largely motivated by unfounded fears about the consequences—in terms of funding and autonomy—of co-operating with the department's administrative and accountability requirements. It is confident that women's shelter management committees can address the issues raised and will, with the assistance and support of the department, 'develop consistent administrative and management practices which can only enhance their reputation for integrity in their dealings and reinforce their highly valued position in our community'. The report contains numerous recommendations aimed at improving the administration of individual shelters and the administration of the Women's Emergency Services program by the Department for Community Welfare. It also emphasises that the existing shelter program must be viewed as one important component of a network of services for victims of violence in the family.

During the course of its review, the committee became seriously concerned about the administration of the Christies Beach Women's Shelter. Concerns about deficiencies in financial management, unacceptable management practices and a number of unsubstantiated allegations of professional and personal misbehaviour were forwarded to me. These allegations and other information have been referred to the Commissioner of Police and the Commissioner of Corporate Affairs, both of whom have instigated investigations which are proceeding. The review committee further recommended that 'in view of the maladministration, both historic and current, of this shelter and in view of uncertainty as to whether services to clients are both fully available and appropriate' funding be withdrawn. In accordance with the recommendation, funding of the Christies Beach Woman's Shelter will be withdrawn from 4 September 1987, and the Department for Community Welfare is making contingency arrangements for the provision of services for women and children in crisis in the southern area previously covered by the shelter. These arrangements will be made in consultation with the local community, which will also be involved in planning the re-establishment of a permanent service. Again, I stress the committee's concern that the allegations concerning Christies Beach Women's Shelter should not reflect upon the public perception of, and confidence in, women's shelters generally. Its report says:

> There is no other shelter about which claims of this nature and volume have been received. The claims made below are clearly peculiar to one shelter and not systemic. No prejudice to any other shelter is intended or warranted.

It has been my practice, Ms President, to initiate reviews in areas where it is appropriate. In this case an independent assessment of the situation was essential. The recommendations made as a result of the review will, I believe, lead to better management, more efficient administration and, most importantly, improved services for women and children in crisis. On behalf of the wider community, I thank Ms Judith Roberts and her team. The Department for Community Welfare has developed an implementation plan based on the recommendations contained in their report, particularly financial administration which the department and shelters are addressing in consultation with the South Australian Council of Social Services.

## QUESTIONS

### ADELAIDE CHILDREN'S HOSPITAL

**The Hon. M.B. CAMERON:** I seek leave to make a brief statement before asking the Minister of Health a question about the Adelaide Children's Hospital.

Leave granted.

**The Hon. M.B. CAMERON:** Madam President, extensive publicity at the weekend regarding the serious cross-infection problem at the Adelaide Children's Hospital focussed on two letters written by Dr David Moore, a staff gastroenterologist, to hospital administrators. In one of the letters he says he has lost complete confidence in admitting young infants for more than two weeks because it would be almost inevitable that they would pick up an infection. This is obviously, to use the doctor's words, an intolerable situation, and one which must be resolved immediately.

I have recieved two letters which suggest that the problems have been exacerbated by a union dispute at the hospital involving domestic staff members of the Federated Miscellaneous Workers Union and management. I seek leave to table those letters.

Leave granted.

**The Hon. M.B. CAMERON:** As I understand it, the dispute is over the introduction of a new cleaning policy. The domestic staff have refused since mid-July to do alcohol wipes and sterilisation of rooms immediately following the discharge of infectious patients because they say it is not their responsibility. The result of these bans is that nurses are having to do the cleaning under protest, and I am sure that the Minister would agree that the nurses are busy enough without having to do the work of domestic staff, as well.

The domestic staff have also put bans on 'high cleaning' (cleaning over head height) and the cleaning of walls immediately outside the wards. Hospital management has now agreed that it is the duty of the portering staff, but I understand the porters said they could not do it because of a lack of manpower. My information is that a new porter was hired yesterday, and I am told that the portering staff are

now openly boasting that they can force management to do almost anything.

These three jobs on which the bans have been placed—high cleaning, cleaning of walls, and cleaning rooms after the discharge of infectious patients—all appear to fall within the hospital's 'Position description' document for domestic staff. I seek leave to table that document.

Leave granted.

**The Hon. M.B. CAMERON:** Under the title 'Job duties', it says that staff should 'provide the general cleaning component of wards, clinics and patient care areas or live-in accommodation (including) damp dusting, mopping, polishing, sweeping, buffing, vacuuming of floors, walls, windows and carpets' and adds that they should 'carry out special cleaning as required from time to time', and it is important to note that latter provision. It therefore seems unreasonable that those staff members have been allowed to place bans on these tasks referred to.

In further union problems at the hospital, I understand that the FMWU told the supervisors recently that they must disrupt the hospital managers. The supervisors refused and resigned from the union to join the Public Service Association. However, the FMWU told them that if they did not rejoin the union they would be blackbanned; that is, the staff would refuse to comply with their orders, and I quote from one of these letters:

At Monday's meeting of domestic staff, the following resolution was carried overwhelmingly: 'That the Domestics of ACH will refuse to comply with Supervisors' instructions if after seven days they have not—(1) Rejoined the FMWU and (2) Improved their day-to-day attitude to Domestic staff.'

The supervisors were forced to rejoin the FMWU within the past 10 days, but did so on the proviso that they were able to speak out as they saw fit. My questions are:

1. Will the Minister direct the hospital management to resolve the union dispute, which appears to be exacerbating the cross-infection problem, and ensure that bans on domestic staff cleaning rooms and wards after infectious patients are lifted immediately?

2. Why was it necessary to employ an extra porter—was there no-one at the hospital capable of cleaning the walls?

3. What is the cost of employing the extra porter?

4. Will that cost be borne under the present hospital budget or will it be an additional amount allocated by the Health Commission?

**The Hon. J.R. CORNWALL:** I think that questions 2 to 4 are so specific in nature that no reasonable person would expect me to have the figures immediately at my fingertips, but I do intend to respond at some length to the honourable member's first question. It is appropriate that I bring the Council up to date with what has transpired, particularly since yesterday morning. It is perfectly true that there has been an industrial dispute at the Adelaide Children's Hospital, but that has very little to do with the allegations made by Dr Moore, and it has very little to do with cross-infection at the hospital. I also make the point that, on all the objective evidence that I have received to this time in August 1987, nothing has shown that the situation relating to cross-infection at the hospital is of significantly greater moment than has been the case at the Adelaide Children's Hospital or at comparable children's hospitals over the past decade.

Specifically with regard to cross-infection, I think I can do no better than read into *Hansard* a briefing paper prepared for me by the Chairman of the Health Commission and put into my hands just over an hour ago. The Chairman (Dr McCoy) spent a good deal of this morning at the hospital. I quote as follows:

Background

1. Copies of two letters by Dr David Moore, Staff Gastroenterologist at the Adelaide Children's Hospital (ACH), which were included as agenda papers for the meeting of the hospital's Infection Control Committee on Thursday 6 August 1987, were 'leaked' to the *Sunday Mail* and reported on Sunday 9 August.

I do not think that that would be news to anyone. I understand that they were also circulated generally to the media on Sunday morning. The briefing paper continues:

2. In these letters, Dr Moore expressed grave concern about alleged rates of cross-infection in the ACH, particularly for infants under six months of age who are admitted for periods longer than two weeks.

Dr Moore referred specifically to five of his infant patients who suffered gastric rotavirus and/or respiratory infections. That, as I said on Sunday, should be seen against the background of 16 500 South Australian children who were admitted to the ACH over the period of the past 12 months. The briefing paper continues:

Typical comments by Dr Moore included:

'I have to admit I have lost complete confidence in the safety of admitting young infants for prolonged periods.'

'I am going to explain to parents that, if the admission is longer than two weeks, it would be almost inevitable that their child will pick up an infection while an inpatient in this hospital.'

'If the rate of cross-infection within this hospital at the moment, although I have not hard data to back me up, were to leak out to the press, the impact on the hospital would be devastating.'

Dr Moore urged greater emphasis on handwashing by nurses and medical staff, both resident and visiting (in fact, one of his principal complaints was that doctors and nurses were not washing their hands); appropriate disposal of nappies; and immediate isolation procedures for infected infants. The ACH's response is outlined as follows. Dr Brian Fotheringham, Medical Director, ACH, reported to the Minister of Health and responded at a press conference on 9 August 1987, as follows:

There is a minor outbreak of cross-infection at the ACH at present, but it is no worse than in other years.

There is an established routine at the ACH for dealing with such patients. The ACH has recently reopened another ward for the winter period with capacity for isolation of up to 20 additional patients. With an average length of stay of around 3½ days, there are obvious difficulties associated with identifying the sources of infection (that is, is it a case of cross-infection or was the patient admitted with the infection?). 'Golden Staph' (Methicillin Resistant Staphlococcus Aureus) or MRSA is a good indicator of cross-infection and the ACH has had no reported cases this winter. Industrial problems relating to changed procedures and the use of new equipment by cleaning staff at the ACH, although linked with the matter of cross-infection in the *Sunday Mail* report, are not released.

The briefing paper further states:

The cleaning of areas following discharge of infectious patients has always been done, and continues to be done, by nurses.

The Board of Directors of the ACH has engaged Professor Peter McDonald, Professor of Microbiology, Flinders Medical Centre, to address the specific allegations made by Dr Moore and to review infection control procedures at the hospital.

The Board of Directors of the ACH is holding a Special Board Meeting at 4 p.m. today (11 August 1987) to address the issues involved.

As to the industrial dispute, it is certainly not my intention at this time to become involved. I believe that that would be counterproductive. It is not my practice and never has been to interfere in the good conduct of individual hospitals. The industrial relations at the hospital are the responsibility of the hospital administration and the management. I am perfectly satisfied at this time that senior administration are conducting negotiations in a satisfactory manner.

**The Hon. M.B. CAMERON:** I have a supplementary question. My last question was: will the costs of the new porter be borne under the present hospital budget or will there be an additional amount allocated by the Health

Commission? The Minister must surely have an answer to that.

**The Hon. J.R. CORNWALL:** As I said, that is not within my knowledge. If the Hon. Mr Cameron considers it to be a matter of great moment in the overall Adelaide Children's Hospital story then I will certainly be happy to bring back a reply when I have the details.

## MINIMUM RATING

**The Hon. L.H. DAVIS:** I seek leave to make a brief explanation before directing a question to the Minister of Local Government on the subject of the minimum rate.

Leave granted.

**The Hon. L.H. DAVIS:** The Minister will remember only too well that, at the annual meeting of the Local Government Association on 25 October 1985, she said:

> There is no suggestion whatsoever that the ability to levy a minimum rate should be removed.

Since that date, the Minister has totally reversed her position and, in the *Advertiser* of Saturday 8 August, she claimed that the minimum rate is 'unfair and of dubious legality'. The local government community has been understandably concerned at her extraordinary and contradictory position on minimum rates. On four separate occasions during 1986 she told Parliament that the Local Government Association had been unable to provide her with information to justify maintaining minimum rates, but the Secretary-General has provided me with a written denial of the Minister's claims. In the parliamentary recess, the opposition to the abolition of minimum rates increased, with the strong Spencer Gulf Cities Accociation being the latest of many local government and influential community groups to call for the retention of the minimum rate. The Minister would have received a letter dated 26 June 1987 from Mr Lindsay Thompson, General Manager of the Chamber of Commerce and Industry, which indicated that the full council of the chamber had resolved not to support the abolition of the minimum council rate. The letter concludes that the abandoning of the present minimum rating system and the implementation of the proposal of the Government or the Centre for South Australian Economic Studies would, on a user-pays criterion, produce a less equitable result than that which exists at present.

The Minister would be aware of the strong criticism levelled at her failure to consult adequately with the Local Government Association and to note the almost universal hostility among local councils to a change in the rating system. There is a growing suspicion in local government circles that the State Government's determination to rip the guts out of the rating system stems from the fact that the Government would save up to $20 million in a financial year in pensioner concessions. My questions are:

1. Does the Minister stand firm in her determination to abandon minimum rating in the face of overwhelming opposition from local government?

2. If so, does she admit that it is simply to save the State Government money at the expense of a large number of the 126 councils throughout South Australia?

**The Hon. BARBARA WIESE:** First, I indicate to the honourable member that his question shows that he is out of touch with the discussions that have been taking place in the local government community during the past few months on the issue of the minimum rate and its inclusion or otherwise in the Local Government Act Amendment Bill, which I hope to introduce during the course of this session of Parliament. If he were in touch, he would be aware that there has been a significant shift in opinion within the local government community about this issue. In fact, a very significant number of councils in South Australia no longer want to adhere to the previously fairly universal policy decision of the Local Government Association that the minimum rate be retained. Indeed, a very significant number of councils do not believe that it is such an important issue that the Local Government Association should have held out in the way in which it has on this question or should have consistently refused, as it has over a long period, to negotiate with the Government on this very important issue. I will restate the Government's position because it is very important that people understand why it is that the Government is standing firm on the question of the minimum rate. Certainly, there is an issue with respect to State Government funding—

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

**The PRESIDENT:** Order!

**The Hon. BARBARA WIESE:**— but that is not the main issue involved here. What is at issue is the rating system itself and whether the principle that local government rating be based on property values should be adhered to. That is the issue. It is an issue of equity and fairness for ratepayers. There is absolutely no doubt at all that the way in which the minimum rate has been used by some councils in South Australia is not only unfair but of dubious legality. Members opposite should take due account of that because many people in local government have, and they realise that, if somebody in one of those council areas chooses to challenge in the courts the use of the minimum rate, it will be found to be illegal.

So, that is a very serious issue, but the question of the equity of the use of the minimum rate is also a very serious issue as far as the Government is concerned. There is no doubt also that a significant number of ratepayers around South Australia own or occupy low valued properties and very often they tend also to be low income earners who are paying a disproportionate burden of the rates across this State because councils are choosing to use the minimum rate provision in the Local Government Act as a revenue raiser and not as it was originally intended to be used.

Let us talk again about the Local Government Association's position on this issue, because it has shifted significantly during the past few months. Opposition members and other people in this place should take due account of that. Recently a seminar was conducted by the Local Government Association to discuss this and other issues. There was much discussion on the minimum rate during the course of that seminar. In fact, the resolution that was carried by the Local Government Association certainly said in part that the association favoured the retention of the minimum rate. But, it also said that it would like the opportunity to be able to use the alternative proposal that was put by the Government to the Local Government Association for consideration. That, I might say for anybody who has been following this debate, should be seen as it is—a very significant shift in opinion. In fact, the idea of imposing a levy rather than using the minimum rate has very widespread support in local government.

I might say also that some councils in this State have now decided that the minimum rate is no longer something that they wish to use and in fact will probably cease to use it altogether. So, there has been a significant shift in local government opinion in South Australia, and I think that honourable members, in the lead-up to the introduction of this Bill, should take due account of that and start talking to some of the people in local government who are not attached to the Spencer Gulf Cities Association and some

of the other councils that I understand recently visited members of the Opposition. They should get a broader perspective of what is going on in local government with respect to this issue.

On the question of consultation, I point out that it is now almost a year since the Government started to talk with the local government community about the provisions of the Local Government Act and, in particular, the rating and finance amendment Bill. There has been extensive consultation, and every person in this Chamber should be well aware that we have talked this issue almost to death, not only at just about every regional meeting in this State but also at numerous meetings with the executive members of the Local Government Association and with individual councils that wanted to put a point of view to me as Minister. I have consulted extensively on this issue and, if people by this time do not understand that and do not understand the issues, they are really not in touch with what is going on with respect to this Bill.

In fact, the consultation has not yet finished, because the Local Government Association President and Secretary-General have indicated to me that they wish to hold further discussions on the matter before I introduce the Bill, and I will be very happy to meet that request, as I have been happy to meet every other request that has been put to me for discussions on this question.

I want to repeat the Government's position on this issue. Our main concern with respect to the minimum rate provisions of the Act is that we should be quite clear about what we want to use as the basis for rating in local government, and that there has been a significant abuse in some parts of the State of the minimum rating provision of the Act that severely distorts the rating system; it is on that issue that I have sought discussions with local government. Over a very long period of time I was not able to get to people in local government to address that very significant fundamental issue.

I have a responsibility as Minister of Local Government in this State to see that the provisions of the Local Government Act are being used appropriately. At a time when we are revising that part of the Act which deals with the minimum rate, when I am aware that there is significant abuse of the provision, I have a responsibility to attempt to do something to address that issue. That is what I have been doing during the past few months, and I trust that, when the Bill comes to Parliament, there will be rational debate on the issue and that a reasonable position will result.

**The Hon. L.H. DAVIS:** As a supplementary question, will the Minister indicate how many councils support the abolition of minimum rates and will she also name the councils that support that abolition?

**The Hon. BARBARA WIESE:** I do not have those numbers in my head and I do not have the names of the councils involved.

*Members interjecting:*

**The PRESIDENT:** Order! You have asked your question.

**The Hon. L.H. Davis:** Is it over three?

**The Hon. BARBARA WIESE:** Yes, it certainly is over three.

**The Hon. L.H. Davis:** Is it over four?

**The Hon. BARBARA WIESE:** It is probably over four. I do not have the numbers, Ms President, but any Opposition that is interested in debating this issue rationally would go around and start talking to people in local government circles, as I have been doing during the past 12 months, to get a proper feeling about what is going on out there and the way in which opinion within local government has shifted.

I think it is significant that in the very early days of this debate members of the Opposition were going along to regional association meetings and were very upfront about their position on the issue of the minimum rate. However, over time, because they could sniff the change in opinion in local government, because they could see that it was pretty fluid and flexible, and because they were not quite clear about what the outcome would be in the discussions in local government, members opposite ceased putting a point of view on the issue of the minimum rate. They were going along to regional meetings and discussing the issues and listening patiently but not putting any position to members of those local government associations. That is pretty significant, because it means that at least some members of the Opposition—those who are a little bit more in touch with local government opinion and opinion-makers—were able to see that there was a change in the position—

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

**The PRESIDENT:** Order!

**The Hon. BARBARA WIESE:** —of local government, and it is a pity that members in this place have not done the same.

## THEBARTON DEVELOPMENT CORPORATION

**The Hon. K.T. GRIFFIN:** I seek leave to make an explanation prior to directing a question to the Minister of Local Government on the subject of the Thebarton Development Corporation.

Leave granted.

**The Hon. K.T. GRIFFIN:** Last Thursday the Minister made a ministerial statement on Thebarton Development Corporation Proprietary Limited in response to questions that I raised on 1 April and 8 April 1987. The questions which I raised related to the validity of the Minister's approval under section 383a of the Local Government Act on 18 February 1987 of the formation of a company or an association to undertake schemes for redevelopment of the town of Thebarton under section 382d of the Act and for implementing and managing such schemes. My questions raised serious doubts about the validity and legality of the Minister's approval of the corporation. Her statement last Thursday bears out my concerns and admits that, on the advice of the Crown Solicitor, the approvals were judged to be defective. The statement also refers to a proposal now to establish a joint development committee to meet the original aims of the Thebarton Development Corporation, and that the corporation would be dissolved when this occurred. There are, however, still several questions which are unresolved and which require answers.

One can presume that a considerable amount of time, effort and cost were wasted as a result of the defective approval and the subsequent apparent failure by the council to comply with the Minister's general approval. Because the Minister's approval under section 383a of the Local Government Act was the first under a new section, it would have been appropriate for close liaison to have been established between the Minister and the council to ensure that the Minister's approvals were complied with. In addition, it seems to have taken an inordinately long period of time to get the Crown Solicitor's advice when, according to the Minister's assurance to Parliament on 7 April, the advice was to be available 'in two weeks'.

My questions are:

1. When was the Crown Solicitor's advice on the illegality received by the department?

2. Why was there no liaison between the Minister and the council in the implementation of the approved scheme?

3. What were the costs incurred by the Government and by the council in considering, approving, establishing and winding up the scheme for Thebarton Development Corporation Proprietary Limited?

4. When will the corporation be wound up?

**The Hon. BARBARA WIESE:** I do not have answers to some of those questions and I will have to consult my records in order to provide appropriate replies. However, I will address the question of liaison between the Thebarton council and me. It is not customary for the Minister of Local Government to liaise with individual councils on every single application that a council might make pursuant to various sections of the Local Government Act. I certainly do not have the time to be able to do that. I receive many applications from councils to establish schemes or to do other things relating to the Local Government Act.

However, there was extensive consultation between officers of my department and officers of the Thebarton council prior to and during the establishment of the Thebarton Development Corporation. I am not able to say how often those discussions took place but I am advised by my officers that there were many discussions by telephone and during the course of meetings as this proposal was being prepared.

**The Hon. K.T. Griffin:** And after approval?

**The Hon. BARBARA WIESE:** Yes, there was consultation after approval because it came to our attention that the scheme as implemented may not have been in accordance with the terms of my approval. As soon as that matter was brought to the attention of my officers discussions resumed with representatives of the Thebarton council to ascertain whether or not that was, in fact, true. Therefore, there have been considerable discussions throughout the course of this matter. In fact, Thebarton council officers have always been very cooperative and reasonable in addressing the various issues that were brought to their attention by my officers.

In relation to winding up the corporation, the Thebarton council's resolution indicated that the corporation will be wound up at the time the joint State Government-council committee comes into being. The proposed terms of reference for that committee have been provided by the Thebarton council to the Government and to my colleague, the Minister for Environment and Planning, to be put to the Planning Commission for its consideration. I understand that that matter will be considered by the Planning Commission very shortly. I hope that before long the planning committee, which the council requested, can be established. The corporation will then be wound up.

**The Hon. K.T. GRIFFIN:** I have a supplementary question. In addition to the answers to the questions that the Minister indicated she would bring back, will she ascertain and provide to the Council the date on which the department first became aware that the actions of the Thebarton council may not have been in conformity with the terms of her approval?

**The Hon. BARBARA WIESE:** I will endeavour to obtain a reply to that question, too.

## METERED WATER HYDRANTS

**The Hon. M.J. ELLIOTT:** I seek leave to make a brief explanation before asking the Minister of Local Government a question about metered hydrants for use by country councils in road making.

Leave granted.

**The Hon. M.J. ELLIOTT:** Over some months I have received a large amount of correspondence from councils on Eyre Peninsula and Yorke Peninsula, and particularly in the Upper South-East, expressing concern about changes to the way in which water is drawn from hydrants for road making. So that the problem will be made quite clear, I will quote from that correspondence. The District Council of Lincoln stated:

> For many years council obtained water from water mains using a 50 mm black hydrant for road making purposes in the district. The introduction of metered hydrants met with resistance; however, as council was advised that the water flow would not be restricted through the new meters, it was accepted by council at that time.
>
> However, the filling time for a tanker has increased from 11 minutes to 40 minutes, due solely to a flow reducer in the new meters. The delay has imposed extra costs on this council for road maintenance and construction. The Engineering & Water Supply Department has been approached and they understand our concern. Their suggestion to install overhead tanks, more standpipes or a dam to overcome this problem is an attempt to again impose a cost on council to rectify their error, and will not achieve the desired result.

I corresponded with the Minister, and he stated:

> The 50 mm metered hydrant now on issue to council provides a flow of approximately 400 litres per minute. Councils must be prepared to accept the reduced flow from the new metered hydrants and revise their operations accordingly.

I have had further correspondence with the councils. Apparently there have been ongoing negotiations with the Minister and the E&WS Department, but the reports I am receiving back indicate that the matter is unresolved. Apparently, without councils spending a considerable amount of money on extra water tankers and on a number of other items of equipment, the speed of their roadmaking activity is virtually halved. That is a gross imposition on country councils which have large areas of unsealed roads.

I would have expected that the Minister of Local Government would show some interest in this matter. The major reason for introducing these hydrants was to protect the quality and supply of water for country people. I think that most country people have found that the councils have been responsible in the way in which they were drawing the water. Consequently, the councils suggest that most people would be happy to bear a little inconvenience as long as their rates were kept at a reasonable level.

I was wondering whether the Minister has any response to the situation, whether or not she has or will prevail on the Minister of Water Resources to reverse his decision or at least to come up with some sort of workable solution?

**The Hon. BARBARA WIESE:** This is not a matter about which I can recall receiving any approaches from councils around South Australia.

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

**The Hon. BARBARA WIESE:** They have not approached me about it—that is what I am saying. I presume that they rightly know that, if they are to resolve the issue, they must consult with the Minister of Water Resources. However, if the honourable member supplies me with copies of relevant correspondence, I will take up the matter with my colleague the Minister of Water Resources and bring back a report.

## VOLUNTARY COMMUNITY FUND

**The Hon. J.C. BURDETT:** I seek leave to make a brief explanation before asking the Minister of Health and the Minister of Community Welfare a question about a voluntary community fund.

Leave granted.

**The Hon. J.C. BURDETT:** In the last session of Parliament I referred to a voluntary community fund to assist voluntary organisations throughout South Australia along

the lines of the American 'United Way' or the 'Community Chest' in Singapore. At page 105 of *Hansard* (6 August 1986) I stated:

> One of the worst aspects of the Minister having floated the poverty tax is that he has killed off an excellent voluntary scheme which would have substantially helped the poor. The scheme has been variously known as Community Chest or United Way. It first came to my notice in detail in Singapore in 1981 while I was Minister of Community Welfare. I reported upon its activities. In the following year the then Director-General of Community Welfare went to the United States and observed the phenomenon usually called in that country The United Way. He did not report on this in the official report of his trip because it was not within his general terms of reference. He did, however, report on it to me.
>
> The essential elements are that the Government, the Opposition, the unions and industry are united to cooperate in the scheme at the outset. The scheme is that industry, employees and the public at large are invited to make voluntary contributions to a fund to be distributed between the voluntary welfare sector. Industry itself would contribute voluntarily according to each company's own means and concerns: members of the public would do the same; employees would do the same, and employers would be encouraged to extend to their employees the facility of payroll deductions for their convenience.
>
> Distribution in the voluntary welfare sector would be carried out by a property representative committee. There would be no suggestion of inhibiting voluntary welfare groups from doing their own thing in regard to fund raising.

Further down on that page I am reported as saying:

> My successor as Minister of Community Welfare, the Hon. Greg Crafter, pressed on with the scheme and set up a working party to investigate its implementation. The working party undertook extensive consultation with industry, the unions, the Commonwealth Government, about tax deductibility, and the State Opposition.

Madam President, at the present time there is a great need for funds in the voluntary sector. In many areas disadvantaged people are in dire distress. The areas include the western suburbs, some southern suburbs and the inner north-eastern suburbs. State and Federal Government funding has been very limited for these organisations and the State and Federal Governments seem to have very limited funds to provide directly for extremely disadvantaged people in an emergency situation.

I do not suggest that a community fund relieves Governments of their obligations in this area. However, particularly at the present time when it appears that in the future both State and Federal Governments—those of any colour—will be severely restricted in regard to funds generally and, rather than any increase, will be likely to be faced with a cut of funds in these areas, and any kind of community fund, which could mean substantially greater funding for the disadvantaged, would be a great help.

I pointed out, Madam President, when I spoke on this topic last year, the bipartisan nature of support for the fund. The matter was initially raised by me at the time of the Tonkin Government and has had support since then from the Bannon Government, when the Hon. Greg Crafter was Minister. I pointed out at the outset that the community should examine the possibility of the scheme and my question, Madam President, is: what is the Government's position at the present time in regard to such a fund?

**The Hon. J.R. CORNWALL:** I think I said at the time when the Hon. Mr Burdett asked his question that a grant had been made to SACOSS to fund a consultancy—

**The Hon. Diana Laidlaw:** It was for $35 000.

**The Hon. J.R. CORNWALL:** Yes, that is right, it was $35 000 to fund a consultancy. That has been done. My recollection of the recommendations is by no means perfect, so I will not attempt to reply with specific detail. However, I shall be very pleased to refresh my memory and inquire from SACOSS what the currect state of play is. As the honourable member suggests, it is by no means dead.

Let me say two or three things that are pertinent to the matter of a community chest or a united way scheme. First, it is common knowledge that some of the larger voluntary organisations—some of the larger well organised non-government welfare organisations—are somewhat less than enthusiastic about a community chest scheme. There are very clear reasons for that. There is a limit to the community dollar that will be donated in these areas: there is a limited amount to be spread around.

If you are already in there and you are well organised and, as a result of your fundraising you are getting hundreds of thousands of dollars each year, then obviously, human nature being what it is, one can understand an organisation not being too enthusiastic about sharing—

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

**The Hon. J.R. CORNWALL:** The Hon. Mr Burdett comments that there is a great need for funds in welfare areas. That is perfectly true. However, I must say that such an acknowledgment does sit rather odd on a member of the Liberal Party. We have only just been through a Federal election campaign in which the Federal Leader (Mr Howard)—and he is still the Federal Leader—pledged that if a Liberal Government were elected federally he would reduce public funding by up to 16 per cent, particularly in the welfare areas. In those circumstances—

*Members interjecting:*

**The Hon. J.R. CORNWALL:** A reduction of 16 per cent has never been achieved anywhere, thank God. We should be extremely grateful that not even Mr Reagan or Mrs Thatcher have achieved that. I have just visited both of their countries and I might tell the Council that Britain today is a very sad and divided country. But even the rhetoric of the New Right, the Reaganism, and the monetarist policies of Mrs Thatcher have not approached those sorts of reductions. We really have to get some commonsense into the debate on the funding of welfare areas in particular. It is significant that, in European countries with a long history of social democracy, they are at this very point looking at quite radical ways in which they can reform the delivery of welfare services. They have reached an acknowledged point where they simply cannot tax any further. That makes a lot of sense and all of those countries—

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

**The Hon. J.R. CORNWALL:** I suspect that if there is anyone who has a lot to learn it might well be the Hon. Mr Davis. The Premier is doing very nicely, thank you. All of those countries at the moment are looking at ways, as is the South Australian Government, to involve neighbourhoods and communities a great deal more in meeting the ever increasing challenge that we face, whether it is with the frail aged or with a whole range of social welfare services across the board. There are a number of ways in which that can be approached, a number of very innovative and a number of very constructive ways. It may well be in such a scheme of things that some sort of united way or community chest scheme has a place. I do not really know. At the end of the day it will be basically up to SACOSS and its member organisations to advise the Government and me whether they wish to press on with any such scheme. I will obtain an update and I will be pleased to bring it back and inform the Council.

## FIREARMS CONTROL

**The Hon. CAROLYN PICKLES:** I seek leave to make a brief statement before asking the Attorney-General, representing the Chief Secretary, a question about firearms control.

Leave granted.

**The Hon. CAROLYN PICKLES:** I think that all of us who sat in front of our television sets yesterday and saw the events that occurred in Melbourne quite naturally would have been horrified. However, as a result of that incident people are running riot on the question of arms control. I think other events took place in the Northern Territory and in Western Australia while I was absent from Adelaide. Obviously there is a problem with people being able to get hold of firearms. I think we must realise that it has gone beyond a joke and I think it is time to do something about it. Is the Government considering introducing tighter controls over the access to and ownership of firearms?

**The Hon. C.J. SUMNER:** I thank the honourable member for her question. Certainly the question of firearms use has now been placed very squarely into the public arena for debate as a result of the tragic events that occurred in Victoria. It would be well known to members that the question of the carrying of guns by security guards is also now a matter of public debate as a result of the use of a gun by a security guard recently in a crowded part of the city. Of course, one young woman was injured as a result of the use of that gun. So there is no question now that the issue of appropriate gun controls is very much a matter for public debate and public concern. It is certainly an issue about which I have always held strong views.

I believe that there should be greater restrictions on the carrying of guns and greater restrictions on obtaining guns and gun licences. The Government and the police will be giving attention to this issue. As to the issue involving the security guard, I have asked the Department for Public and Consumer Affairs to prepare a report on that matter and on the training and conditions that apply with respect to security guards carrying hand guns. However, the issuing of a firearms licence and any conditions attached to them are matters for the police under the Firearms Act. When that report is available it will provide some basis for future action in this area.

As to the general issue, the Government has been concerned for some time at the rising incidence of offences involving firearms. More often than not those offences involve the use of unregistered firearms by unlicensed persons. However, it is true to say that some crimes have involved registered firearms and licensed owners. Controls are required that do not discriminate unduly against legitimate firearm users. Of course, that is the issue of balance that must be determined in this case.

Under the Firearms Act there are procedures for obtaining firearm licences which require a review of every application. South Australia's gun laws are as tight as anywhere in Australia and certainly much tighter than those in Queensland and Tasmania. One of the major problems is the lack of uniformity in this area, as was shown by the shootings that occurred in northern Western Australia recently where the arms were purchased in Queensland. Obviously it is an area where the public interest and safety require that Governments cooperate in an attempt to have a stricter regime covering the possession and use of firearms.

The Register of Firearms has wide discretion in refusing applications with the concurrence of the Firearms Consultative Committee—a committee established under the Firearms Act to review decisions. This process is currently being reviewed in relation to hand guns with a view to imposing conditions on the carriage of these weapons. The conditions will relate to the reasons given for the application: for example, an applicant who is an active pistol club member—and seeks a licence on that basis—will have his or her licence endorsed with the condition 'for pistol club purposes'. In these circumstances a person carrying or using a pistol for any other purpose would be in breach of the conditions on the licence. A task force will be formed and it will include representatives of sporting shooters and the security industry to advise Government on the manner in which these conditions can be enforced.

As I mentioned earlier, the majority of offences are committed with unregistered firearms. Obviously, that is one of the major problems; and that is why there is opposition to greater firearm control from some quarters because they say that it is not the legitimate licensed users who are causing the problems but the unregistered and unlicensed. It is cause for considerable concern that many of the offences committed with unregistered firearms involve weapons stolen from registered and licensed owners. Since 1980, 2 579 firearms have been reported stolen in South Australia and not recovered. This figure includes 948 hand guns.

Recently the Western Australian Minister of Police wrote to the Minister of Emergency Services in South Australia suggesting the need for national firearm legislation. I have already said that that should occur, and that will be pursued through the Australian Police Ministers Council. The Government is proceeding on tightening hand gun controls. The question of national firearm legislation will be pursued by the Australian Police Ministers Council. Discussions will be held with the Commissioner of Police in relation to further controls on rifles and shotguns. Certainly, in my view there is a case to step up the controls which exist with respect to the possession and use of firearms.

**The Hon. I. GILFILLAN:** I desire to ask a supplementary question.

**The PRESIDENT:** Supplementary questions can come only from the member who asked the original question.

**The Hon. I. GILFILLAN:** I do not think so, Madam President.

**The PRESIDENT:** If the honourable member cares to look up Sir Erskine May's 'Parliamentary Practice', he will see that supplementary questions are accepted only from the member who asked the original question. However, the Hon. Mr Gilfillan has the call and he can ask a question on this or any other topic.

**The Hon. I. GILFILLAN:** I seek leave to make a brief explanation before asking the Attorney-General a further question on this topic, since it has been raised.

**The PRESIDENT:** On the topic of firearms control?

**The Hon. I. GILFILLAN:** Yes, Madam President.

Leave granted.

**The Hon. I. GILFILLAN:** It is very pleasing for members to hear that the Attorney-General is taking so seriously the issue of firearm ownership and control in South Australia. Tragic though it is, I think incidents such as the one in Melbourne recently seem to be necessary to make us break out of a sort of apathy until the next tragedy occurs. It is on that basis that I think the initiative very clearly mobilised amongst the public—

**The Hon. C.J. Sumner:** This started before that.

**The Hon. I. GILFILLAN:** I think the actual academic analysis starts beforehand. The public's response as witnessed by telephone calls and comments to me is triggered as a result of a particular tragic event. I am not particularly interested in engaging in a debate on this matter with the Attorney; that is pointless. We now have a public which is more sensitive now and more receptive to firearm legislation reform than has been the case in the past.

I ask the Attorney whether he sees any situations of legal firearm use by a private citizen within the metropolitan area which he can identify and which would prevent the following through of this reform to the actual prohibition

of legal ownership and possession of firearms by the general public within a metropolitan area. I ask him to make that comment perhaps as a prediction of what could come in various stages down the way, to comment on what he thinks would be the situation if that law were enacted (as a result of which, there would not be the arms stores with the caches of armaments which could be taken illegally), and to say whether he sees that consequence as reducing the number of stolen and obviously unregistered and unlicensed firearms to which criminals or, probably more important, deranged people could have access.

**The Hon. C.J. SUMNER:** I understand that the Hon. Mr Gilfillan has made this suggestion presumably in one of his regular appearances on the Philip Satchell show; I have heard in the media of this suggestion by the Hon. Mr Gilfillan. Certainly it is not something to which I have given consideration, nor, obviously, has the Government been able to give any consideration to that suggestion. So, I am not in a position to respond one way or the other, except to say that the Government will note the honourable member's proposition and no doubt could give it consideration.

I suppose, in answer to the honourable member's question, that there may be two categories of people—and these are just two that I can think of—who may have firearms, although living in the metropolitan area. One category would be security guards; another category would be the members of pistol clubs; and yet another category might be collectors of antique firearms. I understand that there is a considerable number of those people. The honourable member may disagree and say that there should be no use of firearms for sport or at least not for hunting but, if you accept that that is a category and that it is legitimate, presumably within the metropolitan area there would also be people who had guns for that purpose.

That is just responding to give the honourable member an idea of the sorts of categories of people that would have to be considered if his proposition were to be advanced, but I am not going to respond affirmatively or otherwise to his suggestion. He has made it and no doubt it can be considered within the general context of what the Government has said, namely, that there does need to be a tightening up of firearm controls. It is certainly my personal point of view, although I would repeat that South Australia and the South Australian police administer probably the most stringent firearms licensing and registration procedures of anywhere in Australia at the present time; certainly they are much more stringent than the procedures which operate in Queensland or Tasmania.

## DOMESTIC VIOLENCE

**The Hon. DIANA LAIDLAW:** I seek leave to make a brief explanation prior to asking the Attorney-General a question about domestic violence.

Leave granted.

**The Hon. DIANA LAIDLAW:** This week the *Bulletin* magazine features in its lead story domestic violence, and in part the article highlights that criminal assault within families, which is commonly known as domestic violence, is believed to be the most common criminal activity in Australia outside burglary. The article also accuses politicians Australia-wide of turning their backs on, first, the plight of thousands of women victims of physical assault by their partners, who, with their children, are being turned away from shelters when they seek a secure environment in which to escape; and secondly, the report refers to the fact that most men who assault their partners are not being prosecuted for their violent acts. With specific reference to South Australia, the article noted that magistrates are diverting men found guilty of criminal assault in the home away from a gaol sentence and into counselling and therapy sessions. Although I appreciate that the Attorney would not have the figures at hand, I ask him to ascertain the figures for the years 1981-82 to this financial year within the Magistrates Court in relation to the number of people who have been found guilty of domestic violence and in such incidents those who have been sentenced to gaol and those who have been ordered to undergo therapy and counselling sessions. Also, just before the last State election, the Premier promised that the report of the Task Force on Domestic Violence would be available in August 1986, which is now one year ago. When can it be anticipated that this report will be released?

**The Hon. C.J. SUMNER:** In respect of the second question, I hope shortly. There have been some delays in the compilation of that report, principally because of the illness of, and the inability to complete the report by, one of the researchers involved in it.

**The Hon. Diana Laidlaw:** That's been the excuse for nine months now.

**The Hon. C.J. SUMNER:** It was a problem in getting the thing compiled, as the honourable member would probably know if she ever had anything to do with researching a report and getting it written up. That is a matter of regret, but the Government obviously is concerned and has moved in this area to try to address the very important issues that are involved although, as the honourable member will probably appreciate from the debate on child sexual abuse, in the area of criminal activity within the family very complex issues have to be resolved, and no doubt the release of the report of the domestic violence task force will not conclude the matter. There will still need to be debate about what flows from it. However, allow me to say that I hope that the report can be completed and released shortly to provide the basis for that further public debate.

As to the honourable member's first question, I do not know whether those statistics would be available, because I do not know to what extent the statistical recording system differentiates between ordinary assault and domestic assault, for instance. However, I can certainly make some inquiries to see whether the information that the honourable member requests is obtainable from our present statistical base. Certainly, if the honourable member considered it to be an issue of importance, as she obviously does, I could refer it to those involved with the establishment of the Justice Information System, which is designed to ensure that those people who come into contact with criminal justice agencies are more efficiently dealt with and to ensure that there is quicker and readier access to more sophisticated statistics than has hitherto been possible.

I will refer the honourable member's general policy questions on the basis for differentiating between different types of assault, if that has not already been done, for consideration in developing the programs for the Justice Information System. If the information is available now, I will bring it back for the honourable member.

## GOVERNMENT HOUSE WALL

**The Hon. I. GILFILLAN:** I seek leave to make a brief explanation before asking the Attorney-General, representing the Minister of Housing and Construction, a question relating to the Government House wall.

Leave granted.

**The Hon. I. GILFILLAN:** Honourable members will recall with clarity the discussion that took place in this Chamber and in the media about the destruction and replacement of the southern wall of Government House along North Terrace. I am sure that honourable members will recall my excellent suggestion that it be replaced (if that was necessary) by a sort of see-through fabric that would enable the people of South Australia to enjoy the beauty of the grounds of Government House. The Minister of Housing and Construction, who responded to my correspondence and with whom I corresponded on this matter directly, said that, although my suggestion had been considered, it was rejected. At that time he estimated that the cost of replacing the wall would be $125 000. The last two paragraphs of his letter of 15 June state:

> The reconstruction of the wall will commence in the immediate future using whatever sound material can be salvaged from the original structure—

I emphasise those last few words—

> and supplementing this with additional limestone of the same quality and type. In all other respects, the replacement wall will be in accordance with the original specification.
>
> During the course of discussions, suggestions for opening up the view of the grounds, by constructing a new wrought iron fence, were dismissed as being quite inappropriate from an historical point of view as well as diminishing the privacy of the Governor's place of residence and increasing the security problems.

Since that time, work has progressed very slowly on the project, and I have gone over to the site and discussed with the people working there the detail of the current situation. I include in my preliminary to the question a statement made by the artisan responsible for the wall that none of the original material is being used in the reconstruction: it is all brand new material. To claim that it is an historical replica or in any way identifiable in connection with the previous wall is quite ludicrous. For one thing, the foundations and the entire fabric of establishing the wall are completely different from anything that existed last century. The artisan also said categorically that $125 000 would be a very cheap estimate. He believed that it would blow out well above that. Before asking my question, I take the liberty of saying that it is a great shame that the Government was so pig-headed not to realise—

**The PRESIDENT:** Order! I remind the honourable member that opinions are not permitted in questions. All that is permitted is such explanation as is necessary to make the question intelligible.

**The Hon. I. GILFILLAN:** I stand properly corrected. I put it forward humbly as a member that the preferred option would have been the wrought iron fabric, if anything should have been done in these stringent economic circumstances. The old wall was still eminently stable and should have been left standing if money was in question. I now ask:

1. How can the Government continue to pretend that the replacement wall has anything to do with heritage or history?

2. What is now the current estimate of the cost of the work involved?

**The Hon. C.J. SUMNER:** I will refer the honourable member's question to the appropriate Minister and bring back a reply.

## STANDING ORDER 14

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

That for this session Standing Order 14 be suspended.

I move this motion on the same basis and for the same reasons that applied in previous years.

Motion carried.

## ADDRESS IN REPLY

**The Hon. C.J. SUMNER (Attorney-General)** brought up the following report of the committee appointed to prepare the draft Address in Reply to His Excellency the Governor's speech:

1. We, the members of the Legislative Council, thank Your Excellency for the speech with which you have been pleased to open Parliament.
2. We assure Your Excellency that we will give our best attention to all matters placed before us.
3. We earnestly join in Your Excellency's prayer for the Divine blessing on the proceedings of the session.

**The PRESIDENT:** Order! I call upon the Hon. Mr Crothers to move the motion for the adoption of the Address in Reply, and I remind honourable members to extend the usual courtesies to an honourable member who is making his maiden speech.

**The Hon. T. CROTHERS:** I move:

That the Address in Reply as read be adopted.

Ms Chair, in rising as I do today to formally move the Address in Reply to His Excellency the Governor's speech given to open the third session of the Parliament, I would like to pay a tribute to two of my friends, both well known to me, who gave sterling service to this Parliament in another place, namely: the Hon. Mr Don Simmons and his colleague the Hon. Mr Ron Loveday, both of whom are recently deceased. At this time I would like to offer my condolences to their families, and I am sure that all members present, irrespective of Party allegiances, will join me in so doing.

The Hon. Don Simmons served this country in the Air Force during World War II—service which saw him receive the Distinguished Flying Cross. Those of us who were privileged to know him are aware of the unassuming modesty of his character in relation to his war record and, latterly, to his record in public life. Truly his death has robbed the State and the nation of one of its sons, who will be sadly missed.

The State also suffered a loss with the death of the Hon. Ron Loveday, the former member for Whyalla for 14 years. Ron, like myself, was a migrant to Australia and also, like his former colleague, saw distinguished war service, only this time in the First World War. He was, as I understand it, a soldier settler over on the West Coast of this State in the early days just after the First World War and, as such along with other settlers, had to suffer enormous privation and hardship which, I guess, flowed from a lack of facilities that were the lot of so many of this State's early pioneers. I know that, like his old comrade in arms, he, too, is a great loss to South Australia.

His Excellency's speech lays some stress on the significant reductions of funding from the Federal Government and draws particular attention to the number of difficult decisions which his Government will have to take in order to ensure a balanced approach in distributing the funds it has at hand. However, despite all of these stringencies, it is to be noted that the Bannon Labor Government has been one of the most successful in this State's history in looking after South Australia's interests.

It has been said before, but is well worth repeating, that the advent of the Adelaide Grand Prix has put South Aus-

tralia well and truly on the world map like never before. The spin-off from this event, which has been very good for the tourist industry up to now has, I am sure, yet to develop its full potential. The dogged determination of the Bannon Labor Government and its departmental officers in securing a major portion of the Australian Navy submarine contract is, as yet, little understood even though the transfer of technologies required to facilitate the project will be the greatest in all of the State's 150-year history of European settlement.

I could go on and on, Ms Chair, but perhaps as other speakers will follow me, it is time, on the occasion of my maiden speech, that I passed on to that which is the subject matter for this occasion, and that is my addressing the Chamber for the first time. Therefore, Ms Chair, in speaking for the first time in this Chamber, I would like to place on record my thanks, given in advance, for the tolerance which I know will be shown to me on this, the occasion of my maiden speech, by all other members present, though one suspects that this very probably will be the only time in my parliamentary career that I will be heard in respectful silence.

I am, as many would recognise by my accent, an Irishman by birth though an Australian by choice. Pausing just momentarily to reflect on the land of my birth, I am compelled to say—and I think others on reflection would now be of the same view—that the partitioning of Ireland back in 1921 was one of the tragic mistakes of history, and did then and still does represent short-term gain for long-term human suffering. To give some breadth and depth of dimension to the quantum of that suffering in terms that everyone can understand, I quote from a recent article in *The Parliamentarian* which points out that, in order to put the statistics of violence in Northern Ireland in their proper perspective, the equivalent of the death and injuries occurring there since the late 1960s, had they occurred on the United Kingdom mainland, would correspond to 87 000 dead and 940 000 injured. I trust that this Chamber will begin to understand what I mean when I speak about long-term human suffering.

I am one Irishman who has always believed, rightly or wrongly, in one 32 County Ireland, but at this point must say that I condemn all of the men and women who set out to achieve that objective by the use of indiscriminate and unfettered violence, and I know in my heart that that viewpoint is shared by the majority of the peoples of Northern Ireland. I will, however, make one other observation for whatever it is worth and that is that, in all of the history of the Republican and Northern Ireland Legislatures since their independence in 1921, there has never been a Government of like political philosophical persuasion akin to that of the Party of which I am at this point in time a very proud member. That to me in a silent ways tells a story of a very different sort from that which the majority of Australians perceive to be the story of Ireland.

I have had some research done by the parliamentary research staff and I find that I am the eighteenth person of Irish birth to have been a member of this Chamber or a member in another place. In comparison to some of the former, I am of course only a recently arrived migrant, and I say, with all of the sincerity which I can muster, that any migrant who believes that there are no opportunities for him or her in comparative terms with other nations whence they came have not tried very hard or have had exceedingly bad luck. Truly I believe that Australia, whilst at the moment it is experiencing some difficulty, can with proper management take its place amongst the leading nations of the world.

I am convinced that events which occurred on Saturday 11 July will go a long way down the track to ensuring the re-emergence of Australia as a land of great and constant opportunity. When I pause and think of all the lack of forward planning by successive national Conservative Governments from 1949 through to 1983, with the exception of the years 1972 to 1975, it almost makes me weep to see how the vitality, natural wealth and resources of Australia were squandered through lack of vision by the people who were then in control of the Australian Government. It must surely be realised by all that the world today is marching to the beat of a different industrial drum than hitherto has been the case.

There ought not to be in the Parliaments of this nation, both State and Federal, opposition from political Parties just for the heck of it, when what is at stake is the ongoing future of Australia and all Australians. There really ought to be more unity of purpose than that as we set about trying desperately to make up the time lost to us in restructuring the Australian economy. I believe that the Leader of my Party in this State set the tone for how an Opposition should behave when he himself was the Leader of the Opposition in South Australia, and that is that each item of Government business should be addressed on its merits and in relation to what benefit it would have for all the people of South Australia. His credo was not to oppose just for the sake of opposition but to support the Government of the day, based on merit, or not to support the Government of the day based on the demerits of whatever was the particular proposition in question, a lesson I believe which has not yet permeated the consciousness of the present State Opposition and its Leader, or indeed, the national Opposition in another place, and its current Leader.

Turning yet again, Ms President, to my origins, I have previously said that I was born in Ireland. What I have not previously said is that I joined the trade union movement when I was 15 years old, some 34 years ago, a move which I have never ever regretted. I now feel constrained to address the Chamber on some aspects of that movement, of which obviously not all members present would be aware.

When I look at the world scene, both past and present, I observe that, in the nations which have either oppressed or smashed their trade unions, dictatorship, oppression and/or poverty run rampant. Must we continue to listen to those power-hungry demagogues, who for their own narrow and selfish ends rant and rail against organised labour? Have we already forgotten, or is it a convenience to forget, what happened in Stalinist Russia in the 1920s and 1930s, and Hitler's Germany in the 1930s and the 1940s, when those two individuals smashed the power of the *bona fide* trade unions because they perceived that the only thing that stood between them and absolute despotic rule was the organised discipline of the trade union movement?

Have we forgotten already that a former leader of the British Conservative Party, Sir Harold MacMillan, latterly the Earl of Stockton, was constrained to leave his dying sickbed to address the House of Lords relative to matters in total opposition to the present Prime Minister of Great Britain, Mrs Maggie Thatcher—sometimes known colloquially as Attila the Hen—over her then policies in respect of the trade union movement and privatisation? If I remember correctly, he drew the analogy that her policies were like selling off the family silver until there was no more left to sell, and the question he then posed was, 'What does the British nation do then for its next crust?'

In my view there has never been, in living memory, a Prime Minister so hell bent on securing her own tenure of office at the expense of Britain's and its people's future. In my view it is incontrovertible fact that she is blinded to the

after-effects of the impoverishment on Britain's future generations brought about by her present policies.

The old song, 'There'll always be an England', never has decidedly looked more shaky as a result of bloody-minded Thatcherism. Yet, what do we see? We see the Australian supporters of Thatcherism waxing lyrical in their eloquence, licking their chops in anticipation of the expected demise of the Australian Council of Trade Unions.

Let me tell members of this Chamber that that day is a million light years away. I say that because I know that the trade union movement here will not fall into the same trap as did its British counterpart because it, like the Party which it formed, realises that the only constant in life is change. The majority of unions know that improvements to the system are like politics—they are the art of the possible.

Having said that, I know that unions will not shy away from the original pieces of rationale that led to their formation, and at this point they are worth restating: first, freedom from hunger; secondly, the right to work; thirdly, the right to a meaningful education; fourthly, the right to proper treatment for society's sick; and fifthly, the right to be able to retire in decent, modest comfort.

What then is wrong with all of these things? The answer was, is, and always will be, absolutely nothing. Unions are as aware of the fundamental principles of decent living as you, Ms President, and I. They equally are aware that today's society (as previously stated) marches to the beat of a different drum from that which applied 100 years ago. If anyone here believes that unions will depart from the principles that led to their formation they are baying at the moon.

To encapsulate all of which I have just previously said, I know that that principle above all others that the majority of the Australian trade union movement stands for is justice for all and a fair and equitable distribution of the nation's wealth and resources. If members of this Chamber or elsewhere do not believe what I have just said, let time be the judge of what I believe to be the truth. People who believe that we, as a global race, can continue to behave as we have done up to fairly recently, without some form of payment being exacted from us all, are living in a fool's paradise.

The only possible safe way forward, for not just only South Australians but for all Australians, is to see an injection of planning in our affairs which has been sadly lacking until the past several years. To think otherwise is to reembrace the old 'she'll be right system'—a system which has badly hurt Australia and Australians.

There is but one form of political system at this time which can bring curtailment to our present woes. That system, which is currently working to such good effect in Australia and four of our mainland States, is the system of democratic socialism, and I commend it to this Chamber.

I thank you, Ms President, and all members for giving me the courtesy of your attention. As I previously said, this will probably be the last time that I will be heard in respectful silence, but I point out to members opposite that there is another side to that coin, and they, too, can believe me and look to their laurels when it comes to the cut and thrust of repartee and debate.

**The Hon. G. WEATHERILL:** In seconding His Excellency the Governor's speech, I will talk about the important role that trade unions play in Australian society. Recently, I returned from a trip to England with an even stronger belief that a strong and united trade union movement is vital to a healthy country. Today I will speak about the way in which trade unions protect ordinary working people. Some of what I will be saying may seem very basic, but it is these basics that are under threat.

The trade union movement protects ordinary working Australians in relation to their wages, conditions, unfair dismissals, safety, workers compensation, disputes with management, superannuation, the social wage, Medicare, pensions, education, training and any other problems members have.

The image of the trade union movement in society is poor, and there are a number of reasons for this. First, many trade union officials are too busy doing their job to worry about what people think about them; secondly, the bias of the Australian media; and, thirdly, the lack of funds to spend on advertising. The trade union movement has now realised that if it is to get political support it must improve its image. To do this it must put to rest the following myths. The first—and a favourite myth—is that unions are too powerful. That is what employers and conservatives are always saying, and it is not true. Employers control investment, prices, employment levels and the economy. Unions do not have that power; they react to it. They are reacting to living standards that have been cut sharply, unemployment that is high, profits that are at record levels, and prices that have risen higher than wages. Despite this, strikes are at an all-time low. If unions had any real power over the economy, there would be no wage cuts and no unemployment.

The second myth is, 'I don't need a union—I can deal with the boss.' Unity is strength: that is an old saying, but it is true. How can individuals negotiate with large, powerful corporations? Where will they get the information, the facilities and the negotiating skills to deal with bosses who have massive resources? They cannot do so.

Most individuals and companies are organised (for example, doctors' associations, the Chamber of Manufactures, etc.) It is only natural that people with common interests should band together. Unions have negotiated for fair wages, a 38-hour week, lunch and tea breaks, sick leave, overtime, proper shifts and a safe and healthy workplace. They provide protection from unfair dismissals, legal advice and represent their members if needed. If we had no unions we would lose the lot.

Thirdly, as to the myth that unions go on strike too often, this is a favourite myth of every newspaper, radio station, employer and conservative politician. In fact, fewer working days are lost through strikes now than at any time since 1969 (*Financial Review*). Far more days are lost through industrial injuries and accidents than through strikes. Unions cannot go on strike unless their members see a problem important enough to stop work and lose wages. Often stopping work is the only way to get employers to listen.

Fourthly, as to the myth that strikes are ruining the country, big business and the media are using the economic crisis to scare people into supporting drastic measures against their own interests. It is not strikes that are ruining the country but the unrestrained greed of takeover merchants and big business that only care about big profits. Business and investors go on strike when Governments do not do what business dictates, or when Governments suggest new ways to force business to pay its fair share of tax. Then businesses stops investment. They put their capital overseas and hold the country to ransom.

Fifthly, the inescapable fact is that over the past three years, while wages have gone down and profits have gone up, real investment in plant and equipment has declined. Corporate tax avoidance has increased, share values have boomed.

Sixthly, since the beginning of 1983 the Arbitration Commission has granted wage rises totalling 14.8 per cent. The consumer price index has risen 22 per cent in that time. The share of profits in national income has risen from less than 13 per cent in 1982-83 to more than 15 per cent in the late 1980s. This is the highest profit share level since the early 1970s. Treasury has also shown that real labour costs have dropped during every financial year since 1981-82. Strikes are now at an all-time low since the 1960s.

Finally, workers who belong to trade unions earn more, work less and receive more employment benefits, on average, than their non-union counterparts. The figures show full-time union workers receive an average of $13 more a week than non-unionists in the same trades. Union members working full time earned $86 a week more and part-time union workers received $145 more. Female part-time workers not in a union earned $172 a week on average compared with $240 a week for women in unions.

Members of the New Right have made it clear that, if they get the opportunity, they will destroy the trade union movement. What is new about the New Right? Nothing. That is the short answer. The New Right are the old wrongs packaged up with a different name. The New Right are about power. They want the power to call the shots—to rule without question, to make profits without any restriction. In the process people's living standards, wages and their family's future will deteriorate.

The New Right super boss, Andrew Hay—from the Australian Federation of Employers—recently argued to the Industrial Commission for a new basic adult wage as low as $171.30 a week gross. Many families now are suffering while trying to manage on $270 a week gross. How would members with kids manage on $171.30 a week gross? Not content with cutting wages and conditions, the New Right would like to cut $12 billion off Government spending. That is cuts in family allowances, hospital beds, emergency care, support for the elderly, education and social welfare.

The New Right's policies on privatising public facilities and reduction of welfare services mean that more families will be left without decent housing, more families will live in poverty and that more children will be hungry. The New Right cares only for big business profits and directing Government and the economy to suit their business needs. They do not know what life is like for ordinary Australians, and they do not care!

The New Right is allied to ultra-conservative groups like those of the Moral Majority and to the Festival of Light. Their extreme nineteenth century views will turn the clock back decades for women. Important social gains that make our community peaceful and a reasonable place to live would disappear.

The Australian trade union movement is a progressive movement. It continually shows the way ahead for Australia. It campaigns for occupational superannuation for all workers. This was a far-sighted response to the increasing inability of the social welfare system to provide an adequate age pension. The accord agreement entered into by the ALP and the ACTU was another far-sighted attempt to solve Australia's economic problems. The ACTU in that document anticipated the problems which Australia faces today and offered a solution to those problems. It is the business community which refuses to invest in Australia's future which frustrates this strategy.

The trade union movement has also seen the importance of democracy at work. It realises that both quality of life for working people and improved productivity can result from a more cooperative industrial relationship. Democracy at work is desirable. However, it can only be achieved if a foundation of rights is established including the right to strike; protection of workers and their representatives from victimisation; removal of sections 45D and 45E of the Trade Practices Act and other anti-union penal clauses in the law; improvements in child care and the removal of sexual harassment from the workplace; union coverage for sub-contractors; improved paid union education leave; and access to company information and union rights to negotiate on company plans.

Therefore, every Australian who relies on a wage to support himself and his family, ought to realise that their welfare is safeguarded by the ability of workers to combine together in trade unions. It is only by doing this that they have any political and economic power to bargain for a fair go.

**The Hon. J.C. BURDETT:** I support the motion. I thank His Excellency the Governor for the speech with which he saw fit to open Parliament. I join with him in expressing sympathy to the families of deceased former members. The Hon. Donald William Simmons, AM, DFC, was a member of Parliament for some of the time that I have been here, and I knew him during that time. I became especially acquainted with him during the sittings of the Electoral Districts Boundaries Commission because he assisted in presenting the Australian Labor Party's case. I got to know him well at that time and he was certainly a most delightful and most able person. I knew his wife, and I express my sympathy to her and to his family. I was not a member of Parliament at the same time as the Hon. Ronald Redvers Loveday, but I met him on several occasions, and I appeared before a committee which he chaired. I had a high regard for him also, and I extend my sympathy to his family.

The first subject I will address is the independence of the Chair and the removal of that office from the area of partisan Party politics. This of course is a subject which was dear to the heart of the late Sir Billy Snedden, a former Speaker of the House of Representatives. I hasten to add that I am certainly not suggesting that there has been bias in the Chair in either House of the South Australian Parliament. On the contrary, during the time when I have been in Parliament it has been my observation that there has been impartiality on behalf of the presiding officers in presiding in their respective Chambers, and that certainly applies to you, Madam President. However, many writers on the subject have seen merit in formally and in practice removing the presiding officer from the realm of Party politics. The convention which has been adopted in the House of Commons in Westminster is of course one model which is already in place.

Before dealing with the actual question of procedures to remove the presiding officers from Party politics, I will briefly follow the history of the office. Although this is a second chamber, it would seem appropriate to consider the history of the office of Speaker in the House of Commons of the Parliament of the United Kingdom of Great Britain and Northern Ireland. After all, Legislative Council Standing Order No. 1 provides that in all cases not provided for in our orders the President shall take as his (that is what the Standing Orders say) guide the forms and usages of that Chamber.

In looking at the history of the Speaker of the House of Commons, I read with great enjoyment, 'The Speaker's Chair' by Edward Lummis written in 1900. I must confess that this is the first time that I have read the book but I do think it should be compulsory reading for members of Parliament and it is an exercise which I am sure all members would enjoy. The power of the Speaker is graphically described at page 6 of Lummis' book, as follows:

The Speaker of the House of Commons has, in simple truth, many of the attributes of royalty. Within the precincts of the House he is invested with a rank superior to that of the Crown. One of our Stuart kings braved it to his cost, and while it is most improbable that any English sovereign will again challenge the authority of the Speaker, it is certain that if he do he will repent it. The Speaker lives in a Royal Palace. He has his own court, his own civil list, his own public household. He is approached and adressed with a ceremony and deference such as is shown to royalty. His person is girt with much of the divinity that doth hedge a king. He represents in his proper self the rights and privileges of all his subjects. In his own sphere his word is law, and, should that law be broken, he keeps his own officer to convey offenders to his own prison. His functions, multifarious as those of sovereignty itself, include many of a stately and ceremonial kind. He wears his own proper robes, which it is not lawful for other men to don. His sceptre is borne before him—the Mace of the most honourable House over which he rules: upon his head reposes his peculiar crown, the Speaker's Wig, and just where the throne stands in the House of Lords we find in the House of Commons the Speaker's Chair. Who shall deny that Mr Speaker is, in every sense in which it were not treason to call him so, a king?

However, lest the presiding officers in South Australia get delusions of grandeur I would remind them that Lummis wrote of Great Britain, and in 1900. The origin of the term 'Speaker' arose from the time when the only right which the Commons possessed was that of addressing humble petitions to the Crown. Their whole procedure consisted of this, to talk until they discovered the wish of the majority and then to send somebody to express it to the King—to 'speak' to the King. This messenger came to be called the 'prolocutor', the 'Speaker on behalf of the Commons'. When I mentioned this piece of history to my secretary she said, 'You mean, he was a kind of union man!' Lummis, commencing at page 10 of his work, recounts the following delightful anecdote:

The first appearance in history of such an officer is curiously connected with the affairs of a somewhat flighty young lady. Dame Alice Perrers was what the chronicler calls *domicella camerae*, which may mean a lady of the bedchamber, and may mean something else, to Philippa of Hainault, queen of Edward III. Her beautiful head enclosed a brain whose natural ability was but little hampered by moral trammels; so endowed, she had slight difficulty in attracting, as soon as it occurred to her to desire it—namely, in A.D. 1366—the favourable attention of her royal lord. The victor of Crécy was well stricken in years, but he was still king, with all manner of good things for his favourites, of whom this young lady determined to be chief. She soon showed that she knew not only how to capture the king, but also how to keep him, and how to turn him to account. In the very next year he gave her an enormous grant of lands, and made her guardian to several rich orphans.

Lummis then recounts other examples of the assets and power given to her and at page 12 he recounts:

She took an interest in any great lawsuits that might be going on, and used to send private messengers to the judges, giving them valuable advice—and other things of even greater value. At last one day she appeared in Westminster Hall, mounted the bench, and gave the presiding judge a lecture on his duties. The Commons had been uneasy for a long time concerning her influence with the king, and this last scandal broke down their patience. Something must be done! Somebody must be sent to admonish His Majesty concerning his unconscionable Abishag. In the fiftieth year of Edward III (1376) the Good Parliament entrusted Sir Peter de la Mare with this highly delicate commission.

I will not continue with the intriguing story of the long game of give and take between Peter and Alice but it does make delightful reading. Suffice it to say that Alice won (surprise, surprise) and Peter languished in *durance vile* for the rest of Edward's reign while the Bad Parliament of 1377 reinstated Alice in all her lands and offices which previously had been taken away.

She remained with the King during his last illness and when he lay a-dying stole the jewelled rings from his fingers and made off as fast as horses could carry her. Lummis dryly comments:

There are several characters in English history for whom a more enthusiastic admiration can easily be inspired.

The happy ending is that Sir Peter was liberated in the first year of King Richard and became the permanent Speaker of the Commons.

Sir Thomas More was among the many distinguished Speakers. The Parliament of 1540, in which Sir Nicholas Hare was Speaker, passed unanimously all that Henry sent down to it including an Act whereby it was burning to deny transubstantiation and hanging to express twice a preference for married priests. In referring to Sir John Popham, an eminent lawyer who became Speaker in 1572, Lummis notes that his profession has afforded more Speakers than any other and that indeed, for more than a century from Sir Thomas More onward, monopolised the Chair.

Of all Speakers, Mr William Lenthall is, *qua* Speaker, the most renowned. He was the Speaker of the Long Parliament. The execution of King Charles I weighed on his conscience in his last hours. He wrote:

I confess with Saul that I held their clothes while they murdered him; but herein I was not as criminal as Saul, for I never consented to his death. No excuse can be made for me, that I proposed the bloody question for trying the King but I hoped even then when I put the question, the very putting the question would have cleared him because I believed there were four to one against it.

Speaker Lenthall's duties had not always been so portentious even during the Civil War. On 24 November 1642 the House decided by 26 Ayes to 18 Noes 'that the King's servant shall have Mr Speaker's warrant to go to the King to carry his stockings and other necessaries'.

Second only to Lenthall in eminence as Speaker was Speaker Onslow, who in 1743 established the convention of the independent Speaker to which I shall refer shortly. When he left the Chair, the convention was not always observed. However, during the term of office of Speaker Charles Shaw Lefevre the convention was firmly established. Incidentally, Lefevre in his 18 years tenure sat considerably more than 15 000 hours, which my colleague the Hon. Peter Dunn would probably agree is a considerable amount of flying time.

The Westminster convention on the independent Speaker is fully discussed in a paper by the late the Rt Hon. Sir Billy M. Snedden, K.C.M.G., Q.C., M.P., while he was Speaker of the House of Representatives. He circulated the paper to all members of the House and with his permission it is printed in *The Parliamentarian* Vol. LX No. 3 for July 1979. He sets out the major elements of the convention as being—

The Speaker shall—
not engage in partisan controversy inside or outside the Chamber, even at general elections;
be re-elected unopposed as Speaker if he so wishes;
not be opposed at general elections by the major Parties;
cast his vote in accordance with established conventions which avoid any judgment on the merits of the question;
resign from the House upon resigning from the Speakership.

The convention that a Speaker, when re-elected to the House, be not opposed for re-election to the Chair after retaining his seat is known as the continuity of the Speakership. I quote from the paper, on the same page:

When electing a new Speaker it is usual for the Government and Opposition to agree upon a candidate and elect him to the Chair unanimously. By strong tradition the agreed nominee in such circumstances is a member of the majority Party.

At general elections the Speaker, by tradition, conducts no political campaign. He stands as 'Mr Speaker seeking re-election' and simply issues a non-political statement to his constituents and is supported by a citizens committee.

Since the Reform Act the Speaker has been opposed in his constituency on several occasions but no Speaker has failed to be re-elected in the past 100 years, if he wanted to continue in office.

At page 130 Sir Billy raises the question why we should have an independent Speakership. He states:

In the Australian House of Representatives there has always been an inherent lack of confidence in the impartiality of the Chair. Whilst not always justified this suspicion has resulted in members showing a lack of respect for the Chair, engaging in behaviour which detracts from the orderly proceedings of the House and in a consequent lowering of the standing of Parliament in the eyes of the community.

Contrast this with the British House of Commons where the Westminster conventions operate. The Speaker, who is not only impartial but who is recognised as such, is treated with the utmost respect. Business flows smoothly with rulings and directions from the Chair being accepted without question. Unseemly behaviour is rare and proceedings are conducted with great dignity and purpose.

In the United Kingdom a number of important discretions have been granted to the Speaker because of his strict neutrality. His ability to decide if a closure motion should be accepted is but one example of how he is able to avoid an abuse of the rules of the House and to protect the rights of the minority. These directions are an essential part of the proceedings ensuring the smooth flow of business and the satisfaction of members that reasonable opportunity has been available to debate an issue.

Knowledge that they may remain as Speaker as long as they desire, subject always to not losing the confidence of the House, enables House of Commons Speakers to concentrate on the job at hand, increasing their knowledge of the rules and practices of the House, and improving their performance in the Chair.

In Australia, uncertainty as to the length of time they are to occupy the Chair does not encourage that course. Proceedings may suffer, and members be less likely to accept willingly the correctness of a ruling or direction from the Chair.

Similarly, the knowledge that they are not dependent upon Party support for return, both in their constituency and to the Speakership, instils greater confidence into the House of Commons Speakers. This flows through into the proceedings generally with members sharing in this confidence and readily accepting the judgment and advice of the Chair.

Until the House of Representatives can accept and apply the Westminster conventions to the Speakership, its performance will continue to fall short of what is expected of it, not only by members but also by the community at large. Until the selection of a new Speaker is mutually agreed upon between the parties, his continuity in office assured and the confidence of members in his strict impartiality gained and enjoyed, the standard of proceedings in the House of Representatives will be less than it should be and consequently receive less trust and confidence from the Australian community.

Sir Billy then raises the question of how it can be achieved in Australia, and puts it in these terms:

It may be claimed that the Speaker's constituents would be virtually disfranchised by such an arrangement since the Speaker is precluded from representing their interests in the manner of a normal member of Parliament. But Philip Laundy put the following view:

> This is a valid argument, although it is highly doubtful that the residents of the Speaker's constituency suffer any practical disabilities. Should any grievances arise among them it is impossible to believe that the Speaker with his great influence would be unable to secure them redress, if not by direct intervention, at least by drawing the attention of the appropriate authority to the matter. The fact that the Speaker is not entitled to cast a deliberative vote on the vital issues of the day has also been criticised as an implicit denial of the representative principle, but Speaker Fitzroy refuted this assertion in 1935, pointing out that the Speaker had a casting vote which might on occasion be the most vital of all votes.

If agreement on these proposals could be reached between the Parties during the life of the present (31st) Parliament it would be possible to elect an unopposed Speaker for the 32nd Parliament who would then resign from his Party and be unopposed by any of the major political Parties in his constituency in the election for the 33rd Parliament.

An argument put in favour of the completely politically independent Speaker is of course that, if the Speaker had, and was seen to have, that degree of independence, more discretion could properly be reposed in his or her hands. Dr Dean Jaensch addresses this issue in his book, *Getting Our Houses in Order*, starting at page 168, and supports Sir Billy's proposition. After supporting and canvassing the concept of the independent Speaker, Dr Jaensch says:

There is one problem in this proposal. In Britain, it is the tradition that the Speaker is not contested in their electorate. Would an Australian electorate be satisfied—not only with no choice between candidates for the period, but also with a member who is tied to the Speaker's desk, and who would be less available for constituency problems?

I shall deal with this problem later. Dr Jaensch, when he delivered the first paper delivered in the lecture series promoted by the South Australian Parliamentary Library on 22 October 1986 (and I think that most of us were present) in a paper entitled 'Getting our (South Australian) Houses in Order' said, at page 7:

Billy Snedden, Speaker from 1976 to 1983, has been a vocal proponent of reforms to the office. His proposals are based on the Westminster practice, where the Speaker once elected to the position resigns from all Party activities, and remains as Speaker regardless of the Party in government. Independent presiding officers in South Australia would be able to exercise greater authority in the Parliament, simply because they would be seen as separate from the contending Parties.

Dr B. Sina Dharma Sastry, in his book *A Comparative Study of the Speaker: India, Britain and the USA*, says, at page 272:

In Britain the succession of a candidate for Speakership is by consensus and compromise but not by disagreement between the Opposition and the Government, except on very few occasions. In the USA, no minority Party accepts the previous Speaker elected by the previous majority Party and selects its own candidate, when it becomes a majority Party. Likewise, the choice of the Indian Speaker too is by disagreement and never did the Government consult the Opposition before nominating a candidate in spite of the repeated requests of the Leaders of the Opposition. It is high time to establish a firm convention that the Speaker of the House should be nominated by the Government in consultation with the Opposition, which enhances the confidence of the Opposition in the Speaker, or else they might feel that he acts as a partisan in favour of the Party which has nominated him. For all the disorders and walk-outs, lack of confidence in the Speaker is the main cause, which can be rectified by this proposed step.

This goes only part way to the full concept of an independent Speakership. I refer now to the book *Parliament—A Survey* by Lord Campion and Others. At page 150 the comment is made:

The most valuable achievement of the parliamentary spirit was the agreement by both Parties in the period between the Reform Acts of 1832 and 1867 to take the Speakership finally out of politics.

At page 152, it states:

It is fortunate that these conventions were established while the Party system was still fluid. The value of a non-partisan Speaker increases, while the chances of finding such a figure (if he is not already there), diminish, in proportion with the hardening of the lines of division between Parties and with the growing difficulty and delicacy of holding the scales even between the Government and the minority. The House of Lords is happy in the enjoyment of an atmosphere which dispenses with restrictive rules and disciplinary powers, and can afford to have as its Speaker a prominent member of the Government in office. Most democratic Chambers still waver uncertainly between two conceptions of the Speaker which we have experienced in succession—the majority leader and the impartial umpire.

In the American House of Representatives—with good reason, since the Executive is constitutionally excluded from membership—the Speaker is the natural leader of the House. But he has recently lost some of the powers through which leadership was exercised, and more attention is paid to his role as a moderator. In France the President of the Chamber or Assembly has generally been a prominent Party politician, an ex-Minister and a future Minister. But the long tenure of the Chair by several Presidents of the former Chamber, and now by M. Herriot, has tended somewhat to place the office above Party.

In Australia and New Zealand the conception of the Speakership and the conventions relating to it, inherited from the House of Commons, have made a brave struggle for survival. But the strength of Party feeling has been too great to allow the office to be left in the hands of a member of a Party which has fallen from power; few Speakers hold office long enough to grow out of their Party attachments; the Speaker's vote is too valuable in a small Chamber for his Party to be willing to dispense with it

in Committee; the Chair is too often regarded as a consolation prize for a disappointed ministerial candidate; and, as some Speakers do not refrain from Party speeches and votes when out of the Chair, their impartiality in the Chair is sometimes, however unfairly, regarded with scepticism.

The concept is addressed in other works in the Parliamentary Library, but I have not set out to be exhaustive in dealing with the literature available. None of the writings on the issue opposes the concept.

The concept of an independent presiding officer in this Chamber was addressed by the Hon. R.C. DeGaris in speaking on the Constitution Act Amendment Bill on 19 February 1985. I recalled that the Hon. Mr DeGaris had raised the matter in a speech in this place, and I contacted him to ask for the reference. In response, I received a note which read, '*Hansard* p. 2589 19 February 1985 (43rd anniversary of the bombing of Darwin).' The Hon. Mr DeGaris has not changed much since he left this Chamber. He said:

I could develop this theme along a number of courses as all honourable members of the Council will appreciate, but the point I wish to emphasise is that, since the adoption of proportional representation and the fact that the Council has an even number of members, the occupation by a member of the Council of the office of President has created in itself difficulties—difficulties in the perception of democratic principles.

The President, of course, cannot vote in Committee stages, except as a casting vote, and that rarely occurs in an even numbered Chamber and, of course, the most essential work of this Council is done at the Committee level. If we are interested in the democratic process—and I am not one to accuse the Attorney-General of not having a feeling for the democratic process—then we should be considering the position of the President as an appointed position, with no voting powers, deliberate or casting. This would ensure that the view of the elected representatives is always, in all circumstances, capable of being expressed on the floor of the Council. This process is already operating in other Parliaments in Western democracies, so it is not a new suggestion.

Further, there is no need to add any cost to the taxpayer for such a proposal, as the appointed President's salary need not include the salary of the elected member. Such a constitutional change not only would ensure the ability of the Council to express its view democratically but also remove the extreme conflicts that can occur in the acceptance of nomination from the floor of the Council for the position of President. In view of the proportional representation voting, it is quite undemocratic that there is a restriction on any member so elected to vote.

The other crucial point in this issue is that, with proportional representation operating, and equality or near equality of Party numbers, the governing Party will always try to buy a President from the opposite Party or Parties. The number of deals that can be done in this procedure are many and varied, and this only leads to public disgust with the institution of Parliament.

This process cannot be restricted only to the Government alone; subtle manoeuvres in other groups can also be involved. There are members who talk expansively of democratic principles then suddenly lose those principles in grasping for other benefits and positions. I would commend to the Council that such a constitutional change be made if the Council is concerned with the rights of all elected members to vote as they see fit.

While I have concentrated on the desirability for complete impartiality, the Hon. Ren DeGaris, in regard to this Chamber, concentrated on the unsatisfactory situation in a PR context of a Party being deprived of one of its elected members when it came to debate and voting. At the 31st conference of the Commonwealth Parliamentary Association, the Rt Hon. Bernard Weatherill, Speaker of the House of Commons (who, I have ascertained, is not related to the Hon. Mr Weatherill in this Chamber), said:

The Speaker had a very difficult job, rather like conducting an orchestra. The Government would like to have its tune played predominantly and it was equally true that the Opposition and minorities wanted to have their tunes played, too. It was the Speaker's duty to ensure they were all played, including the tune played in a little whisper by the man at the back. The object of all this was to give voters an opportunity to choose whether they wanted to hear the symphony they had had over the past five years or another one slightly modified, or even to completely change the tune. He said that he abided by the rule of St Bernard: 'Notice everything, correct a little, cherish the brethren.'

That is an example of the kind of approach that one can expect from an independent presiding officer. I am quite convinced of the desirability of an independent presiding officer. It is very difficult for a presiding officer to maintain a meticulous neutral and non-partisan stance when they take part in the councils of their Party, both parliamentary and otherwise. They are required to take an active part in Party-political campaigning. From time to time outside the Chamber they make statements on particular issues. They are not seen by the public to have the same impartiality and independence from Party politics as the Speaker of the House of Commons has and is seen to have. As I said at the outset, I certainly do not criticise present or past incumbents. They have functioned very well within the system. It is the system which needs to be changed. The late Sir Billy Snedden believed that the House of Commons convention could be successfully imported into the House of Representatives. He may well be right. I have not done the research necessary to make that judgment.

Turning to the South Australian House of Assembly and Legislative Council, in our smaller parliamentary system I cannot see the House of Commons convention being acceptable to either the electors or political Parties. In the House of Assembly political Parties would not be prepared to neutralise a seat. Electors would feel that their member, first, would not have the time to deal with their problems and, secondly, would not be able to air matters on their behalf in the House. In the Legislative Council with the proportional representation system of voting, it would be extremely difficult to guarantee the continuity of the presiding officer at general elections.

I see the answer as being that floated by the Hon. Ren DeGaris, namely a constitutional change to provide for an appointed presiding officer who has no part in the Party political process. He may have had in the past, of course, but could be removed from that by the appointment. If this concept is accepted in principle it should not be too difficult to devise a mechanism to ensure a proper appointment and the non-partisanship of the presiding officer. I suppose, on reflection, that it is a waste of time suggesting reform in this Chamber when the Australian Labor Party has as part of its platform the ultimate abolition of the Legislative Council.

Turning to another topic, I wish to refer briefly to the dispute concerning the Bridgewater line. I do not intend to go into the details of the dispute but I do say that the basis of the problem goes back to the disgraceful act of the Dunstan Government in 1975 of flogging off the country element of the SAR to the Commonwealth. The vehicle was of course the Railways (Transfer Agreement) Act 1975. It was a blatant case of selling a paddock to save the farm, but the money received from the Commonwealth for the transfer has long since been squandered by the then Labor Government. I was in Parliament in 1975 when the Bill was twice introduced. Between the two occasions when the Bill was introduced, there was an intervening election which the Government won very narrowly after a dramatic appearance on television by the then Premier, Hon. Don Dunstan, warning that the Government might fall.

As far as one can ever diagnose the reasons why people vote at an election, I think it must be said that there was a mandate after the election to reintroduce the Bill. But I am sure that a majority of voters and a majority of railwaymen gave the mandate on the basis that they were satisfied that things were not really going to be any different with regard to the railways after the change. This was not to be, and this is the basis of the present problem.

Things did go all right until the split between the STA and Australian National in 1978. To those who read the Act and the agreement, it was always obvious that this was going to occur but the majority of electors and railwaymen did not, and could not be expected to, read the Act.

We are now in a completely artificial situation in which one of the factors which inhibits the Government from continuing with the Bridgewater line is the rental which has to be paid by the STA to Australian National for that portion of the track beyond Belair. Conversely, Australian National has to pay rental to the STA when its long distance trains enter the metropolitan railways area. The system is quite farcical. After all, the track to Bridgewater will always be there because it is part of the main Melbourne line.

I must say that I do have considerable sympathy for citizens of Bridgewater and the ARU in this matter because they have been caught up in an irreversible situation which I and the rest of my Party strongly contested in 1975. I have recently come across a piece of doggerel written by an anonymous railwayman. It states:

Tragically laid to rest 28 Feb 78, SAR,
After carrying passengers and goods afar
Never any more to haul long distant freight,
Cleaved in two, right between the ears in '78,
For faithfully serving the state for 124 years
SAR has been missed by all for 9 long years.

Finally, I pose the question: will the Grange line be next? Mr Acting President, I support the motion.

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

## JURISDICTION OF COURTS (CROSS-VESTING) BILL

**The Hon. BARBARA WIESE (Minister of Tourism)** obtained leave and introduced a Bill for an Act relating to the cross-vesting of certain jurisdiction. Read a first time.

**The Hon. BARBARA WIESE:** I move:

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

The purpose of the Jurisdiction of Courts (Cross-vesting) Bill is to establish a system of cross-vesting of jurisdiction between federal, State and Territory courts. The Jurisdiction of Courts (Cross-vesting) Bill is the result of extensive consultations between the Commonwealth and the States in the Standing Committee of Attorneys-General. The Bill will be complemented by reciprocal legislation in the Commonwealth, each State and the Northern Territory. The Commonwealth Act was assented to on 26 May 1987, and the Victorian Act on 12 May 1987.

The essence of the cross-vesting scheme is that State and Territory Supreme Courts will be vested with the civil jurisdiction (except certain industrial and trade practices jurisdiction) of the federal courts (at present the Federal Court and the Family Court) and the federal courts will be vested with the full jurisdiction of the State and Territory Supreme Courts. The reasons for the proposed scheme are that litigants have occasionally experienced inconvenience and have been put to unnecessary expense as a result of—

*(a)* uncertainties as to the jurisdictional limits of federal, State and Territory courts, particularly in the areas of trade practices and family law;

and

*(b)* the lack of power in these courts to ensure that proceedings which are instituted in different courts, but which ought to be tried together, are tried in the one court.

The primary objective of the cross-vesting scheme is to overcome these problems by vesting the federal courts with State jurisdiction and by vesting State courts with federal jurisdiction so that no action will fail in a court through lack of jurisdiction, and that as far as possible no court will have to determine the boundaries between federal, State and Territory jurisdictions.

The Jurisdiction of Courts (Cross-vesting) Bill seeks to cross-vest jurisdiction in such a way that federal and State courts will, by and large, keep within their 'proper' jurisdictional fields. To achieve this end, the Commonwealth Bill, this Bill and the proposed legislation of other States make detailed and comprehensive provision for transfers between courts which should ensure that proceedings begun in an inappropriate court, or related proceedings begun in separate courts, will be transferred to an appropriate court. The provisions relating to cross-vesting will need to be applied only in those exceptional cases where there are jurisdictional uncertainties and where there is a real need to have matters tried together in the one court. The successful operation of the cross-vesting scheme will depend very much on courts approaching the legislation in accordance with its general purpose and intention as indicated in the preamble to the Commonwealth and State legislation. Courts will need to be ruthless in the exercise of their transferral powers to ensure that litigants do not engage in 'forum-shopping' by commencing proceedings in inappropriate courts.

Under the cross-vesting scheme, no court will need to decide whether any particular matter is truly within federal or State jurisdiction since in either event the court will have the same powers and duties. This is because, in any particular proceedings, insofar as the matters involved are within federal or Territory jurisdiction, the powers and duties will be conferred and imposed by the Commonwealth Act, and insofar as the matters are not within federal or Territory jurisdiction, the powers and duties will be conferred by complementary State legislation. Provision is made in the Bill (clauses 3, 6 and 7) to recognise the special role of the Federal Court in matters in which it now has, apart from the jurisdiction of the High Court, exclusive original or appellate jurisdiction. The legislation has no financial implications.

The preamble to the Bill refers to the inconvenience and expense which has occasionally been caused to litigants by jurisdictional limitations in Federal, State and Territory courts. The preamble then explains how the system of cross-vesting as provided for in the Bill is intended to overcome these jurisdictional limitations without detracting from the existing jurisdiction of any court. I seek leave to have the detailed explanation of clauses inserted in *Hansard* without my reading it.

Leave granted.

### Explanation of Clauses

Clauses 1 and 2 are formal.

Clause 3 is an interpretation provision.

Clause 3 (1) contains definitions. Significant words or phrases used in the legislation are detailed below:

'proceeding' is defined not to include a criminal proceeding;

'special federal matter' is defined to have the same meaning as in the Commonwealth Act, that is to say—

*(a)* a matter arising under Part IV of the Commonwealth Trade Practices Act 1974 (other than section 45D or 45E);

*(b)* a matter involving the determination of questions of law on appeal from a deci-

sion of, or of questions of law referred or stated by, a tribunal or other body established by a Commonwealth Act, or a person holding office under a Commonwealth Act, not being a matter for determination in an appeal or a reference or case stated to the Supreme Court of a State or Territory under a law of the Commonwealth that specifically provides for such an appeal, reference or case stated to such a court;

*(c)* a matter arising under the Commonwealth Administrative Decisions (Judicial Review) Act 1977;

*(d)* a matter arising under section 32 of the Commonwealth National Crime Authority Act 1984;

or

*(e)* a matter that is within the original jurisdiction of the Federal Court by virtue of section 39B of the Commonwealth Judiciary Act 1903.

The abovementioned matters are not special federal matters in those cases where the relevant Supreme Court would have had jurisdiction apart from the Commonwealth Act.

'State' is defined to include the Northern Territory.

'Territory' is defined not to include the Northern Territory.

Clause 3 (2) provides that a reference in the Act, other than a reference in section 4 (3), to the Supreme Court of a State includes, if there is a State Family Court of that State, a reference to that Family Court.

Clause 3 (3) provides that a reference to a Commonwealth Act is a reference to the Act as amended from time to time.

Clause 4 provides for the vesting of additional jurisdiction in certain courts.

The clause invests the Federal Court, the Family Court, the Supreme Courts of the other States and the Territories and the State Family Courts with original and appellate jurisdiction with respect to State matters.

Clause 4 (5) provides that the clause does not invest or confer jurisdiction in those courts with respect to criminal matters.

The Commonwealth Act invests State and Territory Supreme Courts with the civil jurisdiction of the Federal Court and Family Court that is not already invested in the Supreme Court and invests the Federal Court, the Family Court and the State Supreme Courts with the civil jurisdiction of the Supreme Court of each Territory.

The Commonwealth Act (section 4 (4)) excludes from the operation of the cross-vesting scheme matters arising under the Commonwealth Conciliation and Arbitration Act 1904 and sections 45D and 45E of the Commonwealth Trade Practices Act 1974.

Clause 5 provides for the transfer of proceedings.

Under clause 5 (1), where a proceeding is pending in the Supreme Court of the State and the Federal Court or the Family Court ('the federal court') has jurisdiction with respect to any of the matters in the proceeding, the Supreme Court is required to transfer the whole proceeding to the federal court if it appears to the State Supreme Court that—

*(a)* the proceeding arises out of, or is related to, another proceeding in the federal court and it is more appropriate that the proceeding be determined by that court;

or

*(b)* the federal court is the more appropriate court, having regard to:

(i) whether, in the opinion of the Supreme Court, the proceeding, apart from the cross-vesting legislation, would have been incapable of being wholly or substantially instituted in the Supreme Court and capable of being wholly or substantially instituted in the federal court;

(ii) the extent to which, in the opinion of the Supreme Court, the matters in the proceeding are matters arising under, or involving questions as to, the application, interpretation or validity, of a law of the Commonwealth and are not within the jurisdiction of the Supreme Court apart from the cross-vesting legislation (this provision is designed to enable the Supreme Court to transfer to the federal court all proceedings that, because of the nature and extent of their 'Commonwealth' content, ought to have been instituted in that court);

and

(iii) the interest of justice;

or

*(c)* it is otherwise in the interests of justice that the proceeding be determined by the federal court.

The necessary federal jurisdiction is given by section 4 (3) of the Commonwealth Act where it would not otherwise exist.

Corresponding provisions, with appropriate omissions and modifications, are made by other provisions in clause 5 concerning the transfer of proceedings—

—from the State Supreme Court to the Supreme Court of another State or Territory (clause 5 (2));

—from the Supreme Court of another State or Territory to the State Supreme Court (clause 5 (3));

—from the Federal Court or the Family Court to the State Supreme Court (clause 5 (4));

and

—from the Federal Court to the Federal Court or *vice versa* (clause 5 (5)).

Clause 5 (6) provides for the transfer of related proceedings so that all the related proceedings can be heard and determined in the one court. The provision is needed because proceedings related to proceedings transferred under clauses 5 (1) to 5 (5) inclusive might not themselves satisfy the criteria for transfer under those subclauses.

Clause 5 (7) provides that a proceeding may be transferred on the application of a party, of the court's own motion or on application by an Attorney-General.

Clause 5 (8) provides for barristers and solicitors involved in transferred proceedings to have the same entitlement to practise in relation to those proceedings and related proceedings as if they were proceedings in a Federal Court exercising federal jurisdiction (Cf. Commonwealth Judiciary Act 1903, s. 55B).

Clause 6 deals with special federal matters.

A 'special federal matter' is defined in clause 3 (1) and includes matters of special Commonwealth concern, being matters that, apart from the cross-vesting scheme, are within the exclusive jurisdiction of the Federal Court.

Clause 6 provides for the compulsory transfer by the State Supreme Court to the Federal Court of any proceeding involving a special federal matter unless it appears to the Supreme Court that, by reason of the particular circumstances of the case, it is both inappropriate for the proceeding

to be transferred and appropriate for the Supreme Court to determine the proceeding.

Where the State Supreme Court orders under clause 6 (1) that it should itself determine a proceeding involving a special federal matter, it is obliged by clause 6 (3) not to proceed further, except in urgent interlocutory matters (clause 6 (5)), until written notice has been given to the Commonwealth Attorney-General and a reasonable time has elapsed for the Attorney-General to consider whether a request should be made under clause 6 (6) for transfer to the Federal Court. If the Attorney-General makes such a request, the matter must be transferred to the Federal Court (clause 6 (6)). An adjournment may be ordered for these purposes (clause 6 (4)), and, under clause 6 (5) of the Commonwealth Bill, the Attorney-General of the Commonwealth may authorise payment by the Commonwealth of amounts in respect of costs arising out of such an adjournment. These provisions do not apply to appellate proceedings in the State Full Supreme Court if the court below has made an order under clause 6 (1) and the Attorney-General of the Commonwealth has not requested a transfer (clause 6 (8)). If the Supreme Court proceeds through inadvertence to determine a proceeding to which clause 6 (1) applies, its decision in the proceeding is not invalidated by the failure to comply with clause 6 (clause 6 (7)).

Clause 7 deals with the institution and hearing of appeals.

But for clause 7, the full cross-vesting of federal and State jurisdiction between the relevant courts at the appellate levels as well as at first instance could, for example, result in an appeal being taken from a single judge of the State Supreme Court to the Full Federal Court in matters that, apart from the cross-vesting legislation, would have been entirely outside the jurisdiction of the Federal Court. Similarly, the full cross-vesting could result in appeals being taken from a single judge of the Federal Court or Family Court to the Full Supreme Court of the State. Cross-vesting could also give rise to appeals from the Federal Court to the Full Family Court. Clause 7 is designed to prevent the cross-vesting from giving rise to any such appeals except where a matter in an appeal from a single judge of a State Supreme Court is a matter arising under a Commonwealth Act specified in the schedule to the Commonwealth Bill. In such a case, the whole appeal will lie only to the Full Federal Court. The scheduled Acts are Acts, such as the Bankruptcy Act 1966 and the Electoral Act 1919, under which the Full Federal Court now has exclusive appellate jurisdiction.

Clause 8 provides for the making of orders by the Supreme Court removing proceedings from an inferior court or a tribunal to the Supreme Court.

Where a proceeding is pending in a State court other than the State Supreme Court, or pending in a State tribunal, it may be appropriate to have it determined together with a proceeding that is pending in the Federal Court or the Family Court or the Supreme Court of another State or of a Territory of a State Family Court. Clause 8 enables the Supreme Court to remove the proceeding from the other court or tribunal into the Supreme Court so that it can then be transferred to the Federal Court or other relevant court, or so that it may be determined in the Supreme Court itself together with proceedings transferred to it from the Federal Court or other relevant court.

Clause 9 confirms the exercise of jurisdiction by the Supreme Court pursuant to cross-vesting laws.

The cross-vesting scheme is intended to operate as a complementary Commonwealth and State exercise and requires for its operation both Commonwealth and State legislation. Clause 9 of the Bill confirms that the Supreme Court may exercise cross-vested jurisdiction and hear and determine proceedings transferred under any law relating to cross-vesting of jurisdiction. The Commonwealth Act also provides that nothing in the Commonwealth Act is intended to override or limit the operation of State law relating to cross-vesting of jurisdiction.

Clause 10 provides for the transfer of matters arising under Divisions 1 and 1A of Part V of the Commonwealth Trade Practices Act.

Occasionally cases involving relatively small claims under Divisions 1 and 1A of Part V of the Commonwealth Trade Practices Act 1974 (consumer protection matters) have been brought in the Federal Court, but would more appropriately be determined by an inferior court of a State or Territory. With the enactment of the cross-vesting legislation such cases will also be able to be brought in State and Territory Supreme Courts. Furthermore, there are occasions when such claims would more appropriately be heard together with claims in some other court. Accordingly, clause 10 provides for the transfer of proceedings from a specified court to a court of the State other than the Supreme Court.

The Trade Practices Act is amended by the Commonwealth Jurisdiction of Courts (Miscellaneous Amendments) Act 1987 to vest State and Territory courts with jurisdiction concurrent with that of the Federal Court in relation to civil proceedings under Divisions 1 and 1A of Part V of the Trade Practices Act (but not including civil proceedings initiated by the Commonwealth Minister or the Trade Practices Commission). This will enable such proceedings to be commenced in an appropriate State or Territory court.

Clause 11 provides for the conduct of proceedings, including the substantive law and the rules of evidence and procedure, to be applied by a court in which proceedings are brought, or to which they are transferred, under the cross-vesting legislation. Different rules of evidence and procedure may apply for different matters in a proceeding.

Clause 12 provides for the making of orders as to costs in relation to transferred proceedings.

Clause 13 places limitations on appeals.

It provides that no appeal lies from a decision under the cross-vesting legislation as to whether a proceeding should be transferred to or removed from a court, or as to which rules of evidence or procedure are to be applied in transferred proceedings.

Clause 14 deals with the enforcement and effect of judgments.

It provides that a judgment of a federal court given in the exercise of any State jurisdiction may be enforced by the federal court in the State as if it were a judgment given entirely in federal jurisdiction and that any judgment of the Supreme Court given in the exercise of cross-vested State or Territory jurisdiction is enforceable in the State as if it were a judgment in the exercise of the Supreme Court's own non-cross-vested State jurisdiction.

Clause 14 also provides that a thing done by a State court in the exercise of cross-vested jurisdiction has the same effect for the purposes of any State laws (other than laws concerning the enforcement of judgments) as if done by the relevant State court in the exercise of its corresponding non-cross-vested jurisdiction.

Clause 15 provides for the suspension or cessation of operation of the Act.

The clause provides that the Governor, after at least six months notice to the Attorney-General of the Commonwealth and the Attorney-General of each other State, may by proclamation suspend the operation of the State Act from a day not earlier than three years after its commencement. Any such suspension may be revoked by further proclamation.

Clause 15 (3) provides for the Act to cease to be in force, on a day (at any time after the commencement of the Act) specified in a proclamation, if the Governor is satisfied that any of the cross-vesting legislation is ineffective to invest or confer jurisdiction on the relevant courts.

Clause 15 (4) provides for the Act to cease to be in force in relation to the Commonwealth, a Territory or a State, on a day specified in a proclamation, if the Governor is satisfied that the Commonwealth's or State's cross-vesting legislation has been repealed, rendered inoperative, suspended or altered in a substantial manner. The Governor may revoke the proclamation under subclause (4) if satisfied that a substantially corresponding Act of the Commonwealth or other State is again in force.

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

## ADJOURNMENT

At 4.57 p.m. the Council adjourned until Wednesday 12 August at 2.15 p.m.