LEGISLATIVE COUNCIL

Tuesday 9 February 1988

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

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

ASSENT TO BILLS

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

Agricultural Chemicals Act Amendment,
Apiaries Act Amendment,
Architects Act Amendment,
Barley Marketing Act Amendment,
Children's Services Act Amendment,
City of Adelaide Development Control Act Amendment,
Crown Proceedings Act Amendment (No. 2),
Expiation of Offences,
Land Agents, Brokers and Valuers Act Amendment,
Land Agents, Brokers and Valuers Act Amendment (No. 2),
Landlord and Tenant Act Amendment,
Legal Practitioners Act Amendment (No. 2),
Metropolitan Milk Supply Act Amendment,
National Parks and Wildlife Act Amendment,
Parole Orders (Transfer),
Planning Act Amendment (No. 3),
Residential Tenancies Act Amendment,
River Murray Waters Act Amendment,
Road Traffic Act Amendment (No. 3),
Summary Offences Act Amendment (No. 2),
Tertiary Education Act Amendment,
Waste Management,
Wheat Marketing Act Amendment,
Workers Rehabilitation and Compensation Act Amendment.

PETITION: COUNTRY HOSPITALS

A petition signed by 9 233 residents of South Australia praying that the Council would urge the Government not to close or reduce services in country hospitals was presented by the Hon. M.B. Cameron.

Petition received.

PETITION: TOBACCO PRODUCTS

A petition signed by 342 residents of South Australia praying that the Council would urge the Government not to increase State Taxes on cigarettes nor to increase funding for anti-smoking campaigns was presented by the Hon. M.B. Cameron.

Petition received.

PETITION: MID NORTH HOSPITALS

A petition signed by 645 residents of South Australia praying that the Council would urge the Government not to close any country hospitals and expressing concern about hospital services at Laura, Crystal Brook and surrounds was presented by the Hon. M.B. Cameron.

Petition received.

GOLDEN GROVE SHARED SECONDARY FACILITIES

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

Golden Grove Shared Secondary Facilities (Stage 1).

QUESTIONS ON NOTICE

The PRESIDENT: I direct that written answers to the following Questions on Notice be distributed and printed in *Hansard*: Nos 31, 81, 101, 105, 116 to 127, and 131 to 134.

EDUCATION DEPARTMENT STAFF

31. **The Hon. R.I. LUCAS** (on notice) asked the Minister of Health:

1. Of the additional 21.4 full-time equivalent staff to be provided to Special Schools for the Intellectually Disabled as identified at p. 415 of the Program Estimates for 1987-88 (Yellow Book):

(a) How many have already been appointed and:
- (i) in what capacity, i.e. teacher, ancillary or other;
- (ii) on what employment basis, i.e. full or part-time, contract or permanent;
- (iii) if on contract for what period;
- (iv) how many of the teachers have special education qualifications, and
- (v) to which schools have these full time equivalent staff been appointed?

(b) Of the persons yet to be appointed:
- (i) in what capacity will they be appointed, i.e. teacher, ancillary or other;
- (ii) on what employment basis are they to be appointed, i.e. full or part-time, contract or permanent;
- (iii) if on contract, for what period and why;
- (iv) how many of the teachers will be required to have special education qualifications; and
- (v) to which schools are these full-time equivalent staff to be appointed?

(c) If answers to any of the above cannot be given, why?

2. In reference to the 1987-88 objective of the Education Department to allocate additional teachers salaries to the Severly/Multiple Disabled Program:

(a) How many teachers are, or are expected, to be allocated;

(b) How many will be permanent teachers and how many on contract (and for what period);

(c) Will appointments be made on a contract rather than permanent basis, and, if so, why?

(d) Is it intended, or expected, that these teachers will have special education qualifications;

(e) Will the allocation be made for the 1988 school year;

(f) If not, when will it be made;

(g) To which schools will teachers be allocated;

(h) How many children come within the program and what are the projected figures for 1988, 1989, 1990 and 1991;

(i) If answers to any of the above cannot be given why?

3. What was the proportion of contract to permanent teachers in:

(a) general primary schools;

(b) general secondary schools;

(c) special education;

(d) migrant education;

(e) Aboriginal education;

(f) isolated education; and

(g) schools for the intellectually disabled, for:

(i) 1985

(ii) 1986

(iii) 1987 (projected if not actual)

(iv) 1988 (projected)?

(h) If answers to any of the above cannot be given, why?

The Hon. J.R. CORNWALL: The replies are as follows:

1. *(a)* 57 employees totalling 10 Average Full-time Equivalent in 1987-88.

(i) Ancillary.

(ii) Three full-time and 54 part-time employees, of whom 14 are employed on a permanent and 43 on a temporary contract basis.

(iii) Of the 43 temporary contract employees, 38 are employed for a full year, and five for various periods of less than one year.

(iv) Not applicable.

(v) Marion Centre for Hearing Impaired, Hackham West Junior Primary School Special Education, Victor Harbor High School, Strathalbyn High School, Victor Harbor Primary School, Southern Vales Outreach, Southern Vales Fleurieu Special Education, Heysen Primary School, Reynella Primary School, Christie Downs Primary School, Morphett Vale West Primary School, Bridgewater Primary School, East Adelaide Primary School, Alberton Junior Primary School, Unley Primary School, Ethelton Primary School, Kingscote Area School, Mount Barker South Primary School, Prospect Primary School, Le Fevre Primary School, Heathfield High School, Heathfield Primary School, Kidman Park High School, Tea Tree Gully Primary School, Craigmore High School, Salisbury East High School, Northern Area Learning Centre, Brahma Lodge Junior Primary School, Elizabeth West High School, Parafield Gardens High School, Gepps Cross Special Services, Angaston Primary School, Elizabeth Special, Kadina Special School, Port Pirie High School, Peterborough Primary School, Port Vincent Primary School, Mulga Street Primary School, Pinnaroo Area School, Saddleworth Primary School, Loxton North Primary School, Mount Gambier High School, Burra Community School, Kilparin, Sea Winds, Ru Rua, Bresle House, Gully Winds, Regency Park, Gepps Cross Special, Port Lincoln Special, Mount Gambier Special, Language Disorder Unit, Woodville Speech and Hearing Centre.

(b) (i) Ancillary.

(ii), (iii) and (v)—Decisions relating to 1988 appointments have not yet been finalised.

(iv) Not applicable.

(c) Decisions for 1988 appointments have not yet been finalised.

2. *(a)*, *(b)* and *(c)*—Decisions relating to the extent and nature of the additional staff have not yet been finalised.

(d) Yes, the department will endeavour to appoint teachers with a degree or diploma in Special Education.

(e) Yes.

(f) Not applicable.

(g) Refer *(a)* above.

(h) The range of severity of children with disabilities which could be categorised as Severely/Multiple Disabled, and integration of those students into conventional schools makes it difficult to provide exact information about number of students within the program and projections for future years.

(i) Refer *(a)* and *(h)* above.

3.—

	Proportion of Contract to Permanent Teachers	
	1985-86	1986-87
	%	%
(a) General primary schools	8.6	9.7
(b) General secondary schools	6.2	7.0
(c) Special education	7.2	9.0
(d) Migrant education	10.0	12.2
(e) Aboriginal education	8.1	10.4
(f) Isolated education	8.9	10.3
(g) Schools for intellectually disabled	8.1	11.8

(h) Information on a comparable basis is not readily available for the 1984-85 financial year. It is anticipated the 1987-88 proportions of contract to permanent teachers will be less than those in 1986-87.

ASSISTANT DIRECTOR IN AREAS

81. **The Hon. R.I. LUCAS** (on notice) asked the Minister of Tourism:

(a) What were the names of persons holding the positions of Assistant Director in the Areas of the Education Department as at August 1986?

(b) What positions are now held by these officers?

(c) Where not covered by *(b)* above, what are the names of officers who, as at October 1987, hold the positions of Assistant Directors in the Areas?

The Hon. BARBARA WIESE: The replies are as follows:

(a) M. Schiller
K. Stacey
R. Buxton
D. Pallant
P. Mares
K. Dodsworth
R. Gracanin
N. Wilson
D. George
S. Carre
E. Best
R. Arnold
J. Hicks
B. Treloar
B. Denman
R. Anstey
B. Daniel
S. Learmouth

W. Sullivan
J. Coker
(b) Assistant Director, Adelaide Area.
Assistant Director, Adelaide Area
Director, WPTC
Correctional Services Dept.
Assistant Director, Eastern Area
Assistant Director, Eastern Area
Reassigned for staff development purposes
Retired
Assistant Director, Northern Area
Assistant Director, Northern Area
Retired
Project Officer, Adelaide Area
Assistant Director, Southern Area
Assistant Director, Southern Area
Project Officer, Adelaide Area
Assistant Director, Western Area
Assistant Director, Western Area
Retired
Assistant Director, Western Area
Project Officer, Southern Area
(c) B. Prosser
R. Smallacombe
G. Parkinson

TATTERSALL COMMITTEE

101. **The Hon. R.I. LUCAS** (on notice) asked the Minister of Tourism: In relation to the Committee of Inquiry known as the Tattersall Committee—

1. Who are the members of the committee and which bodies do they represent?
2. How were the members of the committee selected?
3. What are the terms of reference?
4. In particular, will the committee be considering all aspects of the Mills report?

The Hon. BARBARA WIESE: The replies are as follows:

1. The members of the committee are:
Gar Tattersall—Independent Convener
Darryl Carter—D. TAFE (Management)
Gordon Tasker—D. TAFE (Management)
Dick Windsor—D. TAFE (Management)
Madeliene Woolley—D. TAFE (Management)
Bob Scholefield—P.S.A. Representative
Robin Ryan—P.S.A. Representative
Lynton Turner—P.S.A. Representative
Margaret Hunt—P.S.A. Representative
Steve Tully—D.P.I.R. Representative
Alan Green—Executive Officer, Organisational Services Manager, D. TAFE.

2. The members of the committee were selected as follows:
G. Tattersall—by the Minister after consultation with Director-General of TAFE and the Commissioner for Public Employment.
D. TAFE Management—by the Director General of TAFE after discussion within the Directorate General.
P.S.A. Representatives—by the Public Service Association.
D.P.I.R. Representative—by the Commissioner for Public Employment

3. The Minister of Employment and Further Education will establish a Committee to review administrative functions within the Department of TAFE.

The Committee will recommend to the Minister of Employment and Further Education on proposals to improve the delivery of administrative functions of Central Office of TAFE giving due regard to the 1987-88 budget.

The Committee in examining the department's strategy for proposed reductions in 1987-88 will:

1. Take cognisance of the administrative and support functions that support the short and long-term achievement of the corporate objectives of TAFE.
2. Compare this information with the current operation of the department with a view to identifying any functions that are not considered to be essential.
3. Consider options for the effective delivery of the identified services presently undertaken by Central Office on a cost benefit basis.

In considering the above primary functions the Committee will have due regard for the:

- Quality and level of services being provided
- Appropriateness of the occupational groupings of staff undertaking administrative and support duties
- Duplication of administrative functions.

In submitting its recommendations to the Minister the Committee will have due regard to the following critical factors:

- The industrial implications
- Workforce composition implications
- Equal Employment Opportunity Implications
- Financial implications

In undertaking this review the Committee will maintain close liaison with groups established by the Department working on key aspects of the Mills Report with which this review is interdependent.

It will also be necessary to give appropriate consideration to all of the recently completed reviews of branches and units in Central Office, undertaken as part of the major Central Office Reorganisation, which have been ongoing over the last few years.

Review Committee Composition

- Four departmental management representatives with at least one having responsibility for EEOMP.
- Four PSA representatives—at least one being from a PSA member employed in the colleges.
- Independent convener.
- Department of Personnel and Industrial Relations representatives.

4. The Tattersall Committee will not be considering all aspects of the Mills Report. The latter Report is being considered by the Policy and Planning Committee of the Department of TAFE. This committee has established specialist working groups to examine all aspects of the Mills Report. It has organised for reports from these working groups to go to the Mills Committee and vice versa.

COMMUNITY BUSES

105. **The Hon. I. GILFILLAN** (on notice) asked the Minister of Health: In relation to the Department of Transport:

1. Can the Minister give an assurance that State Government funding to local councils for the purchase of community buses will be resumed at the earliest possible date?
2. Can the Minister give an indication when this resumption will take place?
3. Does the Government have any plans to bridge the immobility gap for persons who are unable to use public transport and who do not yet have access to community

buses owing to the State Government's failure to provide funding to local councils?

The Hon. J.R. CORNWALL: I refer the honourable member to the answer given to Question on Notice No. 131, as this question is the same.

PUBLIC TRUSTEE

116. **The Hon. K.T. GRIFFIN** (on notice) asked the Attorney-General: In the years ended 30 June 1986 and 30 June 1987:

1. In how many protected estates was the Public Trustee appointed as trustee or manager and under what pieces of legislation were such appointments made?

2. In how many protected estates was some other person appointed as trustee or manager and under what pieces of legislation?

3. What fees does Public Trustee charge with respect to protected estates?

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

1. *(a)* The number of protected estates whereby Public Trustee was appointed Manager pursuant to the Aged and Infirm Persons' Property Act.

Year ended 30 June 1986	Year ended 30 June 1987
18	13

(b) The number of protected estates whereby Public Trustee was appoined Administrator pursuant to the Mental Health Act as amended.

Year ended 30 June 1986	Year ended 30 June 1987
327	252

2. *(a)* The number of protected estates whereby some other person was appointed Manager pursuant to the Aged and Infirm Persons' Property Act.

Year ended 30 June 1986	Year ended 30 June 1987
14	13

(b) The number of protected estates whereby some other person was appointed Administrator pursuant to the Mental Health Act as amended.

Year ended 30 June 1986	Year ended 30 June 1987
63	80

3. Capital Commission—The capital commission is based on the value of the estates.

(a) 4 per cent up to $100 000; 3 per cent $100 000 to $200 000; 2 per cent $200 000 to $400 000; 1 per cent over $400 000.

(b) On gross capital value of unrealised real and personal property to which the estate is entitled at the conclusion of the administration of the estate; such rate as is fixed by Public Trustee not exceeding rates in *(a)* above.

(c) Minimum Commission under *(a)* and *(b)* above; gross estate up to $500—$30; gross estate $501 up to $2 000—10 per cent; gross estate $2 001 up to $5 000—$200.

Income Commission—

Collection of rents 7½ per cent; collection of other income 5 per cent; (Public Trustee's commission is waived on the collection of social security pension if the total amount of cash held in the estate does not exceed $500).

Charges—

Specific charges are made for the preparation of documents or other services additional to normal administation.

For example—real estate documents—up to $40.
—taxation returns—up to $40.

Annual administration and audit fee—up to $40.

OCCUPATIONAL LICENSING BOARDS

117. **The Hon. K.T. GRIFFIN** (on notice) asked the Attorney-General: With respect to the Program Estimates 1987-88 for the Department of Public and Consumer Affairs, page 198, what Occupational Licensing Boards are proposed to be transferred to the Commercial Tribunal in the current financial year?

The Hon. C.J. SUMNER: The Commercial and Private Agents Board.

COMMERCIAL TRIBUNAL

118. **The Hon. K.T. GRIFFIN** (on notice) asked the Attorney-General: With respect to each of the jurisdictions exercised by the Commercial Tribunal, what is the current delay between application and hearing and award of licence or other resolution of the application?

The Hon. C.J. SUMNER: It is difficult to give a representative picture of the average time taken to process an application. Those which are straightforward and against which no objection has been lodged can be granted by the Registrar without hearing. The Commercial Division of the Department of Public and Consumer Affairs aims to process all straightforward applications within 28 days of receipt. However, if a hearing is necessary, processing will take longer.

With regard to all jurisdictions other than builders, a recent sample gives the following indication of time taken between lodging an application and it being finally determined (see attached).

In this sample 47 per cent of all applications were determined within 28 days and 75 per cent within 42 days.

It is difficult to estimate the average time taken for granting of builders licences. However, applicants for a builders licence are presently being advised that it may take up to 12 weeks to process their application. All licence categories are treated with the same urgency.

Licences held under the previous Builders Licensing Act 1986, have been automatically converted to licences in the appropriate category under the new Act. These licensees were not required to lodge new applications.

The number of licence applications under the Builders Licensing Act 1986 has been much larger than anticipated. It appears that the increased penalties under the new Act, and the fact that some persons who were not previously required to hold licences are now required, have prompted a large number of previously unlicensed builders to apply for licences.

Approval has been given to engage additional temporary staff and some staff have been reallocated already from other areas to deal with the large number of builders licences.

Computer systems are also being developed to track the progress of all applications and provide statistical reports.

COMMERCIAL TRIBUNAL

Jurisdiction	% of Applications Determined by Time Indicated (Days)												
	14-28	29-42	43-56	57-70	71-84	85-98	99-112	113-126	127-140	141-154	155-168	169-182	183-Over
Credit Providers	67	33	0	0	0	0	0	0	0	0	0	0	0
S/Hand Vehicles													
— Company	11	44	0	22	11	0	12	0	0	0	0	0	0
— Premises	50	0	50	0	0	0	0	0	0	0	0	0	0
S/Hand Vehicles													
— Individual	0	17	25	8	0	0	17	25	0	0	0	8	0
— Premises	100	0	0	0	0	0	0	0	0	0	0	0	0
Hotel Broker	0	50	50	0	0	0	0	0	0	0	0	0	0
Land Agent	8	53	6	17	11	3	0	0	2	0	0	0	0
Land Broker	0	0	0	0	0	0	0	0	0	0	0	0	0
Land Salesperson	69	27	2	1	0	1	0	0	0	0	0	0	0
Land Valuer	38	38	0	12	0	0	12	0	0	0	0	0	0
Manager	26	37	17	7	2	2	0	3	4	0	0	0	2
S/Hand Goods/Premises	100	0	0	0	0	0	0	0	0	0	0	0	0
S/Hand Dealer	31	25	10	12	4	2	3	2	2	3	1	2	3
S/Hand Manager	14	33	10	19	10	0	0	5	0	0	0	5	4
Travel Agent	44	16	6	6	3	10	6	3	2	2	2	0	0

RESIDENTIAL TENANCIES TRIBUNAL

119. **The Hon. K.T. GRIFFIN** (on notice) asked the Attorney-General: With respect to the Residential Tenancies Tribunal, what is the current time between application for relief and the time of hearing and the making of a decision?

The Hon. C.J. SUMNER: Terminations, applications for urgent repairs and section 81 applications:
—hearing held within one week
—decision is given at hearing.
Urgent applications (section 74):
—hearing held within 1-2 days
—decision is given at hearing.
Bond, compensation, and other disputes:
—if not requiring investigation, hearing within 4 weeks
—if requiring investigation, hearing within 6-8 weeks
—decision generally sent within 2-3 weeks.

LICENSING COURT

120. **The Hon. K.T. GRIFFIN** (on notice) asked the Attorney-General: With respect to the Licensing Court, what is currently the time between application, hearing and decision in matters coming before the court?

The Hon. C.J. SUMNER: Where an application to the Licensing Court has to be advertised under the Liquor Licensing Act 1985, a period of about five weeks necessarily lapse before the matter first comes before the court for mention, when a hearing date will be set after having regard to any objections which have been lodged and the likely duration of the hearing. At present, contested applications are being set down for hearing in June 1988, a period of approximately seven months from the first mentioned date. Uncontested applications are set down for hearing within a much shorter period.

Most reserved decisions relate to applications heard since July 1987. Five decisions are outstanding in respect of hearings held before then.

LICENSED PREMISES

121. **The Hon. K.T. GRIFFIN** (on notice) asked the Attorney-General: The Program Estimates 1987-88, page 198, indicate that 'there is an increasing demand for late night entertainment on Saturdays, and also concern exists about the incidence of supply and consumption of liquor by minors on licensed premises'.

(a) What criteria are relied upon to determine whether or not approval for late night entertainment will be given?

(b) How many applications have been made in the past year to 31 October 1987 and how many approved?

(c) (i) How does the Department of Public and Consumer Affairs identify the 'concern' about supply and consumption of liquor by minors on licensed premises'?

(ii) What steps is the Government taking to deal with that concern?

(d) How many applications are pending for the declaration of 'dry areas' and what criteria are applied?

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

(a) late night entertainment venues are usually subject to either an entertainment venue licence or a hotel licence with a late night permit. In both cases, the authorisation cannot be granted unless the Licensing Court is satisfied that—

(i) the relevant premises are of an exceptionally high standard; and

(ii) the grant is unlikely to result in undue offence, annoyance, disturbance, noise or inconvenience.

(b) From 1 January 1987 to 31 October 1987, 36 applications for hotel late night permits were lodged and 22 have been granted. During the same period, nine applications for entertainment venue licences were lodged and four have been granted.

(c) (i) The concern is identified by monitoring public debate and comments on the subject, and by discussions with licensees, liquor industry representatives, the police and other concerned persons.

(ii) The amendments to the Liquor Licensing Act introduced by the Government in late 1986 and the efficacy of those measures is being monitored to determine whether other steps are required.

(d) Seven such submissions are outstanding. The main criterion for assessment is whether the consumption or possession of liquor by adults in specified public places is a serious and continuous problem.

AMUSEMENT DEVICES

122. **The Hon. K.T. GRIFFIN** (on notice) asked the Attorney-General: The 1987-88 Program Estimates for the Department of Public and Consumer Affairs indicates a 1986-87 target as a review to include 'a proposal to transfer the licensing of amusement devices to the Department of Labour'. What was the result of the review and what devices, if any, are to be the subject of licensing and to be under the control of the Department of Labour?

The Hon. C.J. SUMNER: Preliminary work on a review of the Places of Public Entertainment Act 1913 has been carried out. The next stage of the review will commence shortly.

At present, amusement devices ranging from coin-operated devices such as 'space invader' or 'pinball' machines to large show rides such as a 'big dipper' are licensed under

the Places of Public Entertainment Act, administered by the Department of Public and Consumer Affairs. The one exception is coin-operated ride-on devices for children, which are not licensed at all.

In practice, the Department of Public and Consumer Affairs relies on engineers' certificates and the expertise of officers of the Department of Labour in assessing applications for licensing of amusement devices. One proposal, which is under consideration, is that the assessment and licensing function be transferred to the Department of Labour, perhaps under a new Amusement Devices Act.

CASINO ACT

123. **The Hon. K.T. GRIFFIN** (on notice) asked the Attorney-General: With respect to the 1987-88 specific targets of the Department of Public and Consumer Affairs contained in the Program Estimates, what review of the Casino Act 1983 is proposed, who will conduct the review and what difficulties with the operation of that Act have been identified or suggested in respect of the operation of the Act?

The Hon. C.J. SUMNER: The Lotteries Commission (as licensee), Aitco Pty Ltd (as operator) and the Liquor Licensing Commissioner have all suggested certain changes to the Casino Act to clarify the responsibilities of the supervisory and regulatory bodies. It has been suggested also that a number of specific issues concerning the operation of the Casino, such as power to ban entry, should be considered. It is intended that the proposed review be conducted by officers of the relevant Government agencies (Public and Consumer Affairs, Police, Lotteries Commission and Treasury). The Government has no firm deadline in mind for completion of the review and progress will depend on the range of issues raised by the interested parties and the other demands on the time of those involved.

STATUTORY BODIES

124. **The Hon. R.I. LUCAS** (on notice) asked the Minister of Tourism: With respect to all statutory bodies for which the Minister of Technical and Further Education has responsibility:

1. *(a)* What categories of workers have been awarded the 4 per cent second tier wage rise and when?

(b) (i) What offsets in productivity gains have been agreed in respect of each category of worker?

(ii) Over what period of time will they be achieved?

(iii) What is the measure of such offsets?

(iv) What is the gross cost and nett cost respectively of such rise?

2. *(a)* What categories of workers have not yet been awarded the 4 per cent second tier wage rise?

(b) What negotiations, if any, are current with respect to such rise?

(c) When, if at all, is such rise likely to occur?

(d) What is the estimated cost to Government of such rise?

The Hon. BARBARA WIESE: On advice from the Minister's office the portfolio of the Minister of Technical and Further Education does not have responsibility for any statutory bodies.

WAGE CLAIM

125. **The Hon. R.I. LUCAS** (on notice) asked the Minister of Tourism: With respect to the Department of Technical and Further Education:

1. *(a)* What categories of workers have been awarded the 4 per cent second tier wage rise and when?

(b) (i) What offsets in productivity gains have been agreed in respect of each category of worker?

(ii) Over what period of time will they be achieved?

(iii) What is the measure of such offsets?

(iv) What is the gross cost and nett cost respectively of such rise?

2. *(a)* What categories of workers have not yet been awarded the 4 per cent second tier wage rise?

(b) What negotiations, if any, are current with respect to such rise?

(c) When, if at all, is such rise likely to occur?

(d) What is the estimated cost to Government of such rise?

The Hon. BARBARA WIESE: The replies are as follows:

1. *(a)* The following employees of the Department of Technical and Further Education have been awarded the 4 per cent second tier wage increase with the operative date shown in brackets.

(i) Employees covered by the below listed awards:

- Administrative and Clerical Officers (South Australian Government) Award (first pay week to commence on or after 26 November 1987).
- Journalists (S.A. Public Service) Award (first pay week to commence on or after 26 November 1987).
- Photographer (S.A. Public Service) Award (first pay week to commence on or after 26 November 1987).
- Technical Grades (State Public Service) Award (first pay week to commence on or after 26 November 1987).
- Government Stores Employees Etc., Conciliation Committee Award (first pay week to commence on or after 27 November 1987).
- Metal Trades (S.A. Government Departments and Instrumentalities) Award (first pay week to commence on or after 15 December 1987).
- Carpenters and Joiners Award (first pay week to commence on or after 15 December 1987).
- Engine Drivers' and Firemen's (General) Award (on and from 23 October 1987).
- Teachers Salaries Board Award (on and from 15 December 1987).

(ii) Employees not covered by awards but employed pursuant to the Government Management and Employment Act 1985 (first pay week to commence on or after 26 November 1987).

(iii) Employees not covered by awards as follows:

- Plant Attendants (first pay week to commence on or after 19 November 1987).
- Moulder 'A' Grade Machinist (first pay week to commence on or after 24 August 1987).

(b) The agreements reached for second tier increase for the employees identified in *(a)* above contain both general offset and specific offsets relevant to the employees concerned. Details of all offsets were placed before the appropriate Industrial Commission when ratification was sought for the agreements reached. These extensive lists should be

available in the State or Federal Commission depending on the award concerned.

Productivity/efficiency gains will be achieved over varying time periods depending on the nature of the offset.

The cost to the Government of the second tier increases is indeterminate at this time. However, the Government's expectation is cost neutrality and no further funding will be provided in the department's budget to meet the necessary wage adjustments.

2. *(a)* The following employees of Department of Technical and Further Education have not been awarded the 4 per cent second tier wage increase:

(i) employees covered by the below listed awards:

- Education and Police Departments Conciliation Committee Award
- Government Transport Workers Conciliation Committee Award.
- Printing and Kindred Industries Employees Industrial Agreement.
- Builders Labourers (Mixed Industries Award 1963).

(ii) Certain weekly paid employees not covered by awards.

(b) Negotiations are continuing with the appropriate unions regarding the 4 per cent second tier wage rise for these workers.

(c) The date of operation of any agreement reached will be determined by the Industrial Commission in accordance with the wage principles and be prospective.

(d) The cost to the Government for the 4 per cent second tier wage rise for these categories for workers will depend upon the agreement reached.

126. **The Hon. R.I. LUCAS** (on notice) asked the Minister of Tourism: With respect to the Department of Education:

1. *(a)* What categories of workers have been awarded the 4 per cent second tier wage rise and when?

(b) (i) What offsets in productivity gains have been agreed in respect of each category of worker?

(ii) Over what period of time will they be achieved?

(iii) What is the measure of such offsets?

(iv) What is the gross cost and net cost respectively of such rise?

2. *(a)* What categories of workers have not yet been awarded the 4 per cent second tier wage rise?

(b) What negotiations, if any, are current with respect to such rise?

(c) When, if at all, is such rise likely to occur?

(d) What is the estimated cost to Government of such rise?

The Hon. BARBARA WIESE: The replies are as follows:

1. *(a)* The following employees of the Education Department have been awarded the 4 per cent second tier wage increase with the operative date shown in brackets:

(i) Employees covered by the below listed awards:

- Administrative and Clerical Officers (South Australian Government) Award (1st p.w. to commence on or after 26 November 1987).
- Journalists (S.A. Public Service) Award (1st p.w. to commence on or after 26 November 1987).
- Legal Officers (S.A. Public Service and Statutory Authorities) Award (1st p.w. to commence on or after 26 November 1987).
- Photographer (S.A. Public Service) Award (1st p.w. to commence on or after 26 November 1987).
- Social Workers (S.A. Government) Award (1st p.w. to commence on or after 26 November 1987.
- Speech Pathologists (South Australian) Award (1st p.w. to commence on or after 18 December 1987).
- Superintendents, Etc. (S.A. Public Service) Award (1st p.w. to commence on or after 26 November 1987).
- Technical Grades (State Public Service) Award (1st p.w. to commence on or after 26 November 1987).
- Metal Trades (S.A. Government Departments and Instrumentalities) Award (1st p.w. to commence on or after 15 December 1987).

(ii) Employees not covered by awards but employed pursuant to the Government Management and Employment Act 1985 (1st p.w. to commence on or after 26 November 1987).

(b) The agreements reached for the second tier increase for the employees identified in *(a)* above contain both general offsets and specific offsets relevant to the employees concerned. Details of all offsets were placed before the appropriate Industrial Commission when ratification was sought for the agreements reached. These extensive lists should be available in the State or Federal Commission depending on the award concerned.

Productivity/efficiency gains will be achieved over varying time periods depending on the nature of the offset.

The cost to the Government of the second tier increases is indeterminate at this time. However, the Government's expectation is cost neutrality and no further funding will be provided in the department's budget to meet the necessary wage adjustments.

2. *(a)* The following employees of the Education Department have not been awarded the 4 per cent second tier wage increase:

(i) Employees covered by the below listed awards:

- School Assistants (Government Schools) Interim Award.
- Teachers Salaries Board Award.
- Education and Police Departments Conciliation Committee Award.
- Government Stores Employees, Etc., Conciliation Committee Award.
- Government Transport Workers Conciliation Committee Award.
- Printing and Kindred Industries Employees Industrial Agreement.
- Teachers Secondment Award.
- Aboriginal Education Worker Industrial Agreement.

(ii) Certain employees not covered by awards.

(b) Negotiations are continuing with the appropriate unions regarding the 4 per cent second tier wage rise for these workers.

(c) The date of operation of any agreement reached will be determined by the Industrial Commission in accordance with the wage principles and be prospective.

(d) The cost to the Government of the 4 per cent second tier wage rise for these categories for workers will depend upon the agreement reached.

127. **The Hon. R.I. LUCAS** (on notice) asked the Minister of Tourism: With respect to all statutory bodies for which the Minister of Education has responsibility—

1. *(a)* What categories of workers have been awarded the 4 per cent second tier wage rise and when?

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

Pursuant to Statute—

Building Act 1971—Regulations—Bushfire Prone Areas.
Private Parking Areas Act 1986—General Regulations.
City of Salisbury—By-laws—
No. 1—Permits and Penalties.
No. 2—Streets.
No. 4—Parking.
No. 8—Caravans.
No. 10—Repeal and Renumbering of By-laws.
District Council of Dudley—By-law No. 27—Bathing and Controlling the Foreshore and Recreational Reserves.

QUESTIONS ANSWERED BY LETTER

The Hon. C.J. SUMNER: I seek leave to incorporate in *Hansard* the following answers to questions answered by letter during the recess.

STATUTORY AUTHORITIES

In reply to the **Hon. C.M. HILL** (12 November).

The Hon. C.J. SUMNER: The South Australian Financing Authority (SAFA), Electricity Trust of South Australia (ETSA), Local Government Finance Authority (LGFA), State Government Insurance Commission (SGIC) and the Australian Barley Board are the main bodies that undertake off-shore borrowings. SAFA is the only authority with significant off-shore investments.

The off-shore borrowings of LGFA and SGIC have all been made in Australian dollars and hence no foreign currency exposure has resulted. The Australian Barley Board has a firm policy of fully hedging all of its overseas borrowings which to date have been in $US.

ETSA's off-shore borrowings, undertaken in the early 1980s were made in foreign currencies but were for relatively modest amounts and have in any case been subject to active currency risk management.

SAFA's off-shore borrowings have in no case resulted in currency risk of financial losses as a result of the fall in the value of the $A. This has been achieved by either:

borrowing off-shore in $A;
swapping any foreign currency borrowing into $A; or
investing or lending the proceeds of the borrowings in the currency of the borrowing.

SAFA's off-shore investments have been undertaken in part as a means of hedging the currency risks of its borrowings. There has, therefore, been no net foreign exchange exposures taking together its borrowing, investing and swapping activities (other than very small exposures arising from the profits on investments being held temporarily in foreign currencies).

2. The above authorities, that potentially could have generated currency risks and losses through borrowing activities, have implemented risk management strategies that are adequate and have worked to their and the State's financial advantage.

CORRECTIONAL SERVICES ADVISORY COUNCIL

In reply to the **Hon. I. GILFILLAN** (11 November).

The Hon. C.J. SUMNER: At the time the honourable member asked his question, there had recently been a marked increase in tension within the Yatala Labour Prison. This was not due to a breakdown in communications as suggested but, rather, was due to the release from segregation of a number of prisoners involved in the July disturbance at the prison. Management at the prison have been aware of this and have closely monitored the situation. In recent weeks, there has been a reduction in the level of tension at the institution.

The Department of Correctional Services provides a mechanism for the establishment of prisoner committees. The terms of reference of these committees is restricted to matters relating to programs and education. The need for dynamic management in many areas, as well as the need for management to deal with security issues, means that the extension of the charter of prisoner committees is inappropriate. There are a number of methods open to prisoners to communicate their requirements in all areas, including those not within the parameters of any prisoner committee. Those avenues range from talking to officers, chiefs and assistant managers or communicating with visiting inspectors, members of Parliament and the Ombudsman.

Notwithstanding the freedom which exists for inmates to form prisoner committees, they have not operated at Yatala Labour Prison for a number of years. Indeed, they do not exist at the other metropolitan high security institutions. Despite the best efforts of prison management, such committees tend to become dominated by violent and predatory inmates who then use their positions on the committees against the best interests of other prisoners. As a result, a large number of prisoners prefer not to have prisoner committees.

COUNTRY TRAVEL AGENTS

In reply to the **Hon. K.T. GRIFFIN** (6 November).

The Hon. C.J. SUMNER: In particular, you asked me whether it is possible to ensure that branches of travel agent companies can operate in country towns without attracting the high fees presently payable under the Travel Agents Act and Regulations. In your explanation you said that companies such as Dalgetys, Bennett Farmers and ANZ Bank and other banks and stock agencies have limited their representation quite significantly. According to information available to me, these claims are not correct. I am advised that ANZ Bank Travel has only ever had two accredited travel outlets in South Australia—one in Adelaide and one at Glenelg—plus a fortnightly service at Mount Gambier. Banking branches have previously assisted with preliminary travel inquiries before forwarding details to one of the two travel offices for processing. The only change brought about by the Travel Agents Act is that travel inquiries are now referred directly to the accredited offices without preliminary assistance.

Elders IXL are the major stock company in South Australia involved in travel and they advise that the Travel Agents Act has not caused closure of any of their outlets. They have provided travel booking facilities as a service to country people, not because it is profitable. Domestic airline ticket stocks were held at a number of Elders country outlets by special arrangements. This has been terminated by the airlines due to low productivity of these outlets. Elders have installed an inwards 008 telephone number for country people to enable them to dial direct into the Adelaide travel office, providing much greater expertise for country people at the cost of a local call and rendering branches obsolete.

If these institutions have limited their representation in country areas, it is difficult to believe that the fees payable would have contributed to the reduction.

Under the Fifth Schedule of the Travel Agents Regulations 1987, an initial once only application fee of $30 must

be paid. On the granting of a licence a natural person must pay $125, and a body corporate must pay $300. Those amounts must also be paid when an annual return is lodged. In addition, when the annual return is lodged next year, a fee of $50 will be payable in respect of each office from which the licensee carries on business, up to a maximum of 10 offices.

The Travel Compensation Fund also requires payments to be made. A $125 registration fee is payable, and a licensee must also pay $300 for each outlet from which he carries on business. However, it should be noted that the trustees of the Compensation Fund have indicated that the $300 contribution to the fund will be reviewed after two years. If the level of contributions is sufficient, and if no major payouts have been made, it may be that no further contributions will be required. I do not believe that these fees can be characterised as unreasonably high.

In summary, the minimum cost for a small agency is:

Year 1	
Application Fee	$30
Licence Fee	$125
Compensation Fund	$125
	$300
	$580
Year 2—	
Licence Fee	$125
Branch Fee	$50
Compensation Fund	$425
Office Fee	$50
	$600

These tax deductible costs amount to $11.15 per week in year one, $11.53 per week in year two and may reduce thereafter. The Government does not consider these costs excessive to ensure professionalism amongst travel agents, protection to the travelling public, and public confidence in the tourism industry.

BANKRUPTCIES

In reply to the **Hon. DIANA LAIDLAW** (5 November).

The Hon. C.J. SUMNER:

Mr C. Neave—Commissioner for Consumer Affairs (Chairman)

Mr L. Powell—representing the Department for Community Welfare

Mr I. Bailey—representing the non-government welfare institutions

Mr R. Forte—representing financial institutions

Mr G. Doyle—representing financial institutions

ABORIGINAL IMPRISONMENT

In reply to the **Hon. M.J. ELLIOTT** (7 October).

The Hon. C.J. SUMNER: The Director, Office of Crime Statistics, has now provided me with some tables which I am sure you will find helpful. Table 1 sets out the penalties imposed on persons convicted by South Australian Courts of Summary Jurisdiction and Race, 1985 and 1986. Table 2 sets out the Offence Group Charged in South Australian Courts of Summary Jurisdiction and Race, 1985 and 1986, and Table 3 sets out the imprisonment rate per 100 000 adult population at 30 June 1986, and rate at which adult Aborigines are over-represented in the prison system.

Table 3 is compiled using the 1986 Census figures and it differs somewhat from the AIC table (it was based on 1981 Census projection which underestimated the Aboriginal population in some States).

ROAD MARKINGS

In reply to the **Hon. DIANA LAIDLAW** (3 December).

The Hon. C.J. SUMNER: The Highways Department's pavement marking practices are similar to those adopted elsewhere in Australia and accord with Australian Standard 1742. In problem areas, to combat adverse weather conditions, the line work is supplemented by installing raised pavement markers. These provide additional reflectivity to emphasise delineation of the painted lines and an audible warning to motorists deviating across separation and lane lines.

The paint used in South Australia is obtained from the same manufacturer as that used by road authorities in Eastern States. The department constantly monitors new paint technology and there is no evidence of superior products being available, either interstate or overseas. When new pavement marking products or techniques become available and practical, they will be introduced.

The difficulties experienced by motorcyclists skidding on large areas of paint (that is, arrows and stop lines) have been raised and discussed with the Motorcycle Riders Association (M.R.A.). The department has carried out investigations to develop a material to improve the skid resistance of pavement markings. The latest trials have been successful and equipment is now being developed to apply the new material. It is anticipated that this will be in service within the next 12 months.

DIMETHOATE

In reply to the **Hon. M.J. ELLIOTT** (3 December).

The Hon. C.J. SUMNER: The legal advice concerning quarantine restrictions in respect to section 92 of the Constitution was from the Crown Solicitor.

Sampling of fresh fruit and vegetables from interstate and local sources will continue to be undertaken for pesticide residues. Testing is also being carried out in New South Wales and Victoria.

Some tomato growers have used dimethoate on growing crops in 1987 and it would need to be used by capsicum and tomato growers should such growers be in a Queensland fruit fly quarantine area within South Australia as part of the eradication program.

Tomatoes dipped in a 500 ppm solution of dimethoate for one minute obtain a concentration of 0.89-0.76 ppm dimethoate which is below the maximum residue limit of 1.0 ppm set by the National Health and Medical Research Council. Thus a withholding period to ensure the dimethoate concentration is below 1.0 ppm is not necessary. Thus the Minister of Agriculture is correct.

When dimethoate or Rogor (brand name) is sprayed on the growing tomato plant, the pesticide is concentrated in the fruit and exceeds 1.0 ppm. Such fruits may not be picked and sold since the maximum residue limit is exceeded. Thus a withholding period is required during which time the chemical breaks down not completely but below a concentration of 1.0 ppm.

BAIL

In reply to the **Hon. K.T. GRIFFIN** (3 December).

The Hon. C.J. SUMNER:

(1) On 2 November 1987, an 18 year old male person was arrested for three housebreaking offences and was released on police bail to appear before the Adelaide Magistrates Court. While on bail on 11 November 1987, he allegedly committed further offences and was arrested and brought before the court. Unfortunately the police prosecutor overlooked the fact that the offender was already on bail and did not oppose it.

Following this on 30 November 1987, the same person allegedly committed a further housebreaking offence involving money and jewellery totalling $17 000. When he appeared in the Adelaide Magistrates Court, the police prosecutor opposed bail on the grounds that the offender was likely to again offend. However, the magistrate granted bail on his own recognizance of $2 000 with a guarantee of $2 000, and inserted conditions that he reside at a specific address and not leave it unless accompanied by the guarantor, his father.

When bail was granted on this occasion, the prosecutor indicated that an application would be made for a review of the magistrate's decision. Under the terms of section 16 of the Bail Act, the offender's release was deferred. The decision was reviewed on 4 December 1987, by the Supreme Court which granted him bail and included conditions as to his place of residence, his reporting at a police station, his non-association with certain persons, and his attending a drug dependence clinic as directed by his probation officer.

(2). Under bail review guidelines which exist in the police prosecution branch, a review of a magistrate's decision to grant bail is sought where:

the defendant is charged with more than one murder, or murders in combination with another serious offence;

there are multiple charges for attempted murder, armed robbery, rape, causing grievous bodily harm or wounding with intent;

there are reasonable grounds for apprehending that the person charged will harm or threaten harm to the alleged victim or any potential witness;

there is evidence of persistent non-appearance; or

the defendant is charged with a serious offence and there are reasonable grounds to apprehend that he will reoffend.

QUESTIONS

COUNTRY HOSPITALS

The Hon. M.B. CAMERON: I seek leave to make a statement before asking the Minister of Health a question about country hospitals.

Leave granted.

The Hon. M.B. CAMERON: Members may recall the front-page article in the *Advertiser* of Saturday 30 January in which the Minister of Health outlined what were described as radical plans to reorganise South Australia's country hospitals. This supposed announcement must have caused something of a sense of *deja vu* for people in the South-East and the Riverland, for contained in the Minister's plans were—believe it or not—plans for a new hospital at Berri and the upgrading of the Mount Gambier Hospital, the latter at a cost of $4.7 million. People in the South-East are wondering how the Minister could have the audacity to announce a project which has already been announced, and deferred, several times. They also wonder whether the *Advertiser* still retains a news clippings library following the great media shakeup, because its journalists so readily accepted old proposals as new initiatives. The new hospital for Berri, and upgrading of the hospital at Mount Gambier, are Government plans which have been around for at least four years. Both projects have had funding repeatedly deferred. In fact, the whole saga of the two projects has been reported frequently in the press. Mount Gambier Hospital's upgrading was first foreshadowed by the Minister in October 1982 when he was Opposition spokesman on health.

Dr Cornwall told the *Advertiser* that a Labor Government would upgrade the hospital to 'associate teaching status' with Flinders. He said that the hospital would become a major base hospital for the entire South-East, providing teaching hospital standard specialist care for the region. Then, in February 1984, Dr Cornwall, as Minister of Health, announced that the hospital would be redeveloped at a cost of $5 million. By September 1985 the *Advertiser* was reporting the Minister's announcing that the hospital would get a $12 million redevelopment which was to be done in three stages. At the same time the Minister committed an additional $1.35 million to replace the hospital's ageing boilers.

Then, in February 1986, the Minister was reported in the *Advertiser* as having approved a major facelift for the hospital and as saying that new central sterile supply, radiology, medical records and administration and casualty departments would be included in the plans. Yet by August 1987 the Mount Gambier Hospital had been told by the South Australian Health Commission that there were no funds available for the upgrading during 1987-88. It was only after strong representation to the Minister, highlighting the dangerous state of the 27-year-old sterilising equipment, that the Government found some funds to upgrade that equipment. And, to date, apart from a revamped entrance foyer to the hospital, that has been the sum total of upgrading. This, for a project that was first promised more than five years ago.

I am told that facilities at the hospital are in such a state that some patients are opting to come to Adelaide for treatment rather than having it done locally. Some of the conditions that staff and patients still have to put up with at the hospital include patients recovering in unsterile common corridors after operations; theatre equipment has to be stored in corridors or in areas at the rear of lifts because of lack of storage space; doctors have to change in an area which doubles as an office because there are no change rooms; patients of both sexes have to share inadequate bathroom and toilet facilities; psychiatric, medical and rehabilitation patients are not segregated and are all housed within one unit; and in casualty a treatment room also doubles as a nurses station.

The lack of staff accommodation in this area of the hospital also poses a security risk, especially after hours, when casualty is the only entrance into the hospital. I am told that the radiology department is poorly designed and overcrowded and that a small doorway hatch is used to book in 12 000 patients annually. There are also insufficient waiting areas for patients who frequently spill over into corridors. So much for the upgrading of the Mount Gambier Hospital!

A new hospital for Berri was mooted as long ago as November 1983, when the *News* reported the Minister's announcing that the hospital would be redeveloped at a cost of $3.76 million. Since then the Berri Hospital project appears to have involved much talk but little action from the Minister. When in May 1985 it became apparent that funding would again not be available to begin the scheme, one doctor was moved to write to the Chairman of the hospital board, as follows:

Firstly, it (the deferment) means that the present theatre suite has to continue in use. This has been labelled as obsolete four years ago . . . and nothing has been done to alter this situation. This operating theatre area must surely fall below any minimum

standard and would not be tolerated in an Adelaide teaching hospital or private hospital.

The doctor continues:

By maintaining the present situation, an inferior service, which is not cost effective, is being kept in place. For its population (35 000), the Riverland is probably the most disadvantaged area in South Australia and probably Australia in this regard.

By early May 1986 the State Government had allocated $99 000 for detailed planning on a new hospital, yet on 5 May the South Australia Health Commission's Southern Sector Executive Director, Mr Ray Blight, was reported in the *Advertiser* as saying that development of the $8.2 million hospital would hinge on what Federal funding South Australia received at the Premiers' Conference. Of course, funding was not available for Berri Hospital in 1986, just as it was not available in 1985 or last year. Riverland residents will be heartened by the Minister's latest announcement of a new hospital for Berri but they can be forgiven for being a little sceptical that it will become a reality in the near future. After all, as the Minister emphasised in his latest announcement, the proposals had not been approved by Cabinet.

Will the Minister indicate the starting and completion dates for the recently announced upgrading of the Mount Gambier Hospital and the new Berri Hospital? Can the Minister explain why the announced cost of the Mount Gambier Hospital has fallen from $12 million to the $4.7 million announced recently in the *Advertiser,* particularly in view of the non-completion of many facets of the original upgradings, promised as long ago as 1982?

The Hon. J.R. CORNWALL: I can understand the Hon. Mr Cameron trying to pull a stunt in this place to cover up the omelette that is on his face over his performance with regard to country hospitals.

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: He has been out and about throughout the more than two months during which this Parliament has been in recess, telling lies to the rural residents of South Australia. He has told them—

The Hon. M. B. CAMERON: I do not know whether you take exception to that remark, Ms President, or whether I have to ask the Minister to withdraw that comment. I believe that it is totally unparliamentary, and I ask him to withdraw it and apologise.

The PRESIDENT: I ask the Minister whether he will withdraw it.

The Hon. J.R. CORNWALL: Ms President, the Hon. Mr Cameron has been out and about around rural South Australia, during the parliamentary recess, grossly misrepresenting the situation to people in non-metropolitan South Australia. He has told anyone who is foolish enough to listen—and anyone else besides—that there was a plan to close 12 country hospitals. That was a deliberate untruth, Ms President. It was malicious; it was totally mischievous. We have had quite an extraordinary response from the rural press since we released a little over a week ago the general scenario which is being negotiated in a number of areas in non-metropolitan South Australia.

We had telephone calls from rural newspapers all around the State saying. 'But Martin Cameron said there are clear plans to close 12 hospitals. Did he mislead us? Surely he would not mislead us,' to which, of course, my press secretary was forced—not too reluctantly—to say, 'You'll have to draw your own conclusions'. The fact is that Martin Cameron, for his own Machiavellian, malicious reasons has been out and about causing a whole lot of unnecessary alarm. He has been deliberately misleading the people of rural South Australia.

The Hon. Diana Laidlaw: You laid the ground rules.

The Hon. J.R. CORNWALL: We will come to you later, Ms Laidlaw. We will come to you and your little leak later.

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: Let me—

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: Let me very briefly, again, go through the truth. The truth is now being widely disseminated abroad in rural communities, but I think that it is worth going through again.

The Health Commission has been negotiating and discussing this with the communities in three areas in particular, Port Pirie, the Mid-North—and this is now all old news, of course. I never fail to be amazed by the Hon. Mr Cameron's penchant for recycle. The Health Commission has been negotiating now for many months, in three areas in particular, Port Pirie in the Mid-North, the Clare Valley, and the Murray-Mallee. In addition, there have been negotiations and discussions in the Riverland, and in the Upper South-East in particular.

Let me say a number of things. First, in the life of this Government, in the next two calendar years there are no plans whatsoever to close any hospital in South Australia. That is a categorical assurance—which I repeat. There is no plan whatsoever to change the status of any hospital on the West Coast or the Eyre Peninsula. That is fact, that is truth, and it is well past time that those people of South Australia who live outside the metropolitan area—and for whom members of the Opposition profess concern—were told the truth and no longer caused unneccessary distress. The behaviour of Mr Cameron on this issue has been quite disgraceful. He has been deliberately mendacious, persistently mendacious—if anyone does not know what mendacious means let them consult the dictionary.

What is proposed is a change of status for three small country hospitals, at Laura, Blyth and Tailem Bend. Again, I have made it very clear (and one cannot go beyond the life of a particular Government) that in this term of the Bannon Government there is no proposal to close a hospital anywhere in this State. With regard to Laura, Blyth and Tailem Bend, they are, respectively, 20 minutes, 12 minutes, and 13 minutes from the nearest district hospital. Each of those three hospitals has an average daily acute bed occupancy of three patients; each of those hospitals has three acute patients on any given average day.

The Hon. M.B. Cameron interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: Nine patients in total. The cost to taxpayers in both the rural communities of South Australia and the city of Adelaide is $1.3 million a year. The proposal is that the primary health care services of those hospitals, as the institutional base of health care in those areas, should be significantly upgraded. There will be more visiting physiotherapists, podiatrists, speech pathologists, and a range of health professionals.

The Hon. M.B. Cameron interjecting:

The Hon. J.R. CORNWALL: That is the most despicable aspect—

The Hon. M.B. Cameron interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: —of the whole trail of mendacity and misrepresentation that the Hon. Mr Cameron has been laying around rural South Australia. He knows very well, or he should (perhaps he does not know very well, because he is not very well informed in these

matters), that for more than 30 years the situation has been—

The Hon. M.B. Cameron: You sit in your ivory tower.

The Hon. J.R. CORNWALL: And you sit on your—

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: —no, no, that is alliteration.

The Hon. M.B. Cameron interjecting:

The PRESIDENT: I have called for order, Mr Cameron. The honourable member has asked his question.

The Hon. J.R. CORNWALL: For more than 30 years the situation has been that serious accident cases, serious medical emergencies, were stabilised in the small country hospital by the doctor and the nurse or nurses on duty, with the patient then being transferred on.

That remains the situation: neurosurgery is not carried out at Laura Hospital. You would be surprised to learn, I am sure, that they do not have an intensive care unit at the Blyth Hospital. It is really a ridiculous, but very distressing proposition, that that sort of stabilisation would not continue; of course it would.

The Hon. M.B. Cameron: Only if you got a doctor there first.

The Hon. J.R. CORNWALL: Exactly, quite right. If you will listen, you will learn. The whole concept of health in the late 1980s, when there is a great deal of high-tech medicine about, is not the same as it was in the 1950s. These simple minded souls, Mr Cameron and his two friends on the back bench, think that health care is about the hospital, the chemist and the doctor. It is a great deal more than that in the late 1980s, and we are very anxious that people in these areas get the full range of services.

In one small South Australian town (obviously I do not want to identify it) we had 21 reports of suspected incest last year. That town, that area, that region, has no child, adolescent, or adult mental health services. That is what we are about. To suggest that in the late 1980s that the doctor, the chemist and three or four acute beds is a health service is of course to completely misunderstand what health care, health maintenance and health advancement is about.

The other thing we need is to attract more specialists to the country, attract more of the allied health professions—as your predecessor Arthur Whyte used to often tell me, they had great difficulty attracting a physiotherapist to visit the West Coast, to places like Kimba—and again we need to upgrade those sorts of services.

In addition, as part of this program we are looking at, and we will almost certainly provide the resources for, a full-time resident medical officer at both the Port Pirie and the Whyalla hospitals by the middle of next year. In the 1988-89 financial year the Health Commission and I have proposed a new regional base hospital at Berri in the Riverland among our top three projects. With regard to the Mount Gambier Hospital, the original proposal—and it is still the proposal—for a three phase upgrading of that hospital at an estimated cost of a little in excess of $14 million, is still very much in the capital works program. The first part of the first phase of that program is $4.1 million, and $600 000 is proposed for upgrading the laundry. That is all on the list for the 1988-89 financial year, but obviously is subject to Cabinet approval as part of the budgeting of capital works. Therefore, the three-phase upgrading of the Mount Gambier Hospital remains a high priority.

An honourable member: But it hasn't been approved.

The Hon. J.R. CORNWALL: I will not respond to that imbecilic interjection asking whether, as part of the 1988-89 budget, it has been approved in early February. The simple situation is that we have, as the conventional economic wisdom in this country and in most of the Western democracies in the late 1980s, a philosophy of small government. No-one has been more shrill or vocal in espousing that than Opposition members of the South Australian Legislative Council. If they want small government they have to accept that in social terms in many areas it has a high and, in some cases, a very high price. No-one more than I would like to be able to give an assurance that the workers would be on site tomorrow at the Mount Gambier Hospital.

The simple situation, as everyone in South Australia knows, is that last year there were particular stringencies with the capital works program and neither the Mount Gambier nor the Berri proposals were approved for commencement. Incidentally, I would like to hear from some of the colleagues in another place of members opposite. What does the member for Custance (the Leader of the Opposition, John Olsen) think about the proposal to upgrade health services in the Copper Triangle? What does the member for Murray-Mallee think about the proposition to buy public beds in the Keith private hospital? What does the member for Chaffey think about the proposals that we have made to upgrade health services in the Riverland? What does the member for Eyre think about the various proposals we have made to upgrade services in the Mid-North and other places?

This is not a simple matter. It is certainly not a matter which ought to be misrepresented in the way in which it has. I think that the actions of Mr Cameron, in particular, and a number of his henchmen—

Members interjecting:

The Hon. J.R. CORNWALL: The last time I was talking to the CWA it did not have too many male members. The actions of Mr Cameron and his henchmen in this area have been despicable, and he stands condemned for it. As for his contortions today in trying to discredit the services that are delivered at the Mount Gambier Hospital, let me tell this place that Mount Gambier, in terms of medical and health services, has always been very well served by national standards. The standards of general practice and the range of specialist medical services at Mount Gambier have been outstanding now for a generation. I can attest to part of that 25 years personally, as can my wife and family. To get up in this place and to try to spread fear and alarm with regard to medical and health services in Mount Gambier is as despicable and wretched as the rest of the honourable member's performance has been in the whole matter of country health services.

TOBACCO ADVERTISING

The Hon. L.H. DAVIS: I seek leave to make a very brief explanation before asking the Minister of Health a question about tobacco advertising.

Leave granted.

The Hon. L.H. DAVIS: On 26 December the *Advertiser* carried a report that the Minister of Health would be introducing legislation into the Parliament this month—that is, February—that would outlaw sponsorship of sporting and cultural events by tobacco firms. In fact, he was quoted as saying that that was his intention. My questions are as follows:

1. Does the Minister still intend to introduce such legislation this month?
2. If not, why not?
3. If not, when will such legislation be introduced?
4. Will the Bill exempt certain sporting and cultural events or activities from the ban on tobacco sponsorship?

5. Why did the Minister of Health recently offer his resignation to the Premier?

The Hon. J.R. CORNWALL: Before Christmas any number of rumours were going about involving all sorts of activities of mine that were going to have me drummed from the South Australian Parliament. I will not go into any of the details. It has never been my custom to foster filthy rumours; that is, the Liberal Party's caper. The latest rumour is a good clean rumour that I must tell you about. I was told only last week by somebody in the voluntary sector that I have bought substantial freehold commercial property in the suburb of Toorak in Melbourne, and that Patrice and I will be moving there shortly after my retirement is announced soon. I regret to say that I cannot afford to buy commercial property—

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: —or any other sort of property in suburban Toorak and, regrettable or otherwise as it might be, I assure members that I will be in this Parliament, God willing—or whoever it is who controls these matters—for at least another five years. As to the question of the legislation with regard to tobacco sponsorship and advertising, drafting instructions have gone to the Parliamentary Counsel this day. I would hope that if the draftsmen and other people are diligent enough it will be back to the Cabinet by the end of this month. I will be trying to introduce it in to this House early in March; I have Cabinet endorsement to do so. Therefore, I have not been rebuffed. I have covered the resignation.

The Hon. R.I. Lucas: You're not going to deny it?

The Hon. J.R. CORNWALL: You never resign.

The Hon. R.I. Lucas: You just wait to be kicked out.

The Hon. J.R. CORNWALL: Well, you never resign. In relation to who might be exempt under this Bill, the Hon. Mr Davis and his colleagues will have to wait until that Bill is introduced, and it will then become very clear to them.

SUPPRESSION ORDERS

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

Leave granted.

The Hon. K.T. GRIFFIN: As everyone knows, suppression orders made by the courts have been a constant source of debate in recent times. The Attorney-General has said in the press and in this House that there are too many suppression orders. It was with some surprise that I read a story in the *Sunday Mail* on 24 January that a new row is brewing in the Labor Party over this issue.

The report says that Labor backbencher, Mr Bob Gregory (whom incidentally the newspaper tips to be in the Bannon Cabinet as a result of a reshuffle this year), wants to see some legislation within the life of this Parliament to outlaw the naming of people appearing before the courts until they are found guilty or until they plead guilty. The report states:

> Mr Gregory was the driving force behind a successful move at last September's annual Australian Labor Party State convention calling for tougher court suppression laws. His resolution, which attracted strong support from convention delegates, called for the names of all defendants to be suppressed until they had been found guilty and for it to be made an offence for anyone to publish or broadcast the names of accused people.
>
> Mr Gregory says he will be pressing within the parliamentary Caucus for the Government to go ahead with the new laws, which became official Party policy after the convention vote. 'I'm hopeful we will have the legislation through within the life of this Parliament,' he said.

My questions are:

1. Does Mr Gregory's view carry such weight in the Labor Caucus as to change the current view of the Attorney-General?

2. Does Mr Gregory's statement mean that the Government will change its view about suppression orders?

The Hon. C.J. SUMNER: The answers to the two questions are 'No'.

An honourable member: Doesn't he carry much weight in Caucus?

The Hon. C.J. SUMNER: Not on this particular point, no, although he is very influential in areas within his expertise. I have dealt with the issue of suppression orders previously and that position has not changed at this point in time. Members will recall that some three years ago legislation dealing with the topic of suppression orders was passed in this Parliament following a report that was prepared by a legal officer in the Attorney-General's Department. That report was made available—both the discussion paper and the final report—to the public, the press and members of Parliament. As I recall it, following that report the Bill was prepared, introduced and passed by the Parliament without dissent. Therefore, the current regime that exists with respect to suppression orders was supported by the whole Parliament except, I think, with the possibility of one case in the House of Assembly.

The Hon. R.I. Lucas: Did Bob Gregory support it?

The Hon. C.J. SUMNER: Yes, Mr Gregory supported the Bill at the time. In the Labor platform there is and has been for many years a proposal for what is called 'statutory suppression'. That proposition was initially put forward in 1967-68 by the Labor Government at that time and concerns a situation where names of accused persons are suppressed until those persons are found guilty or at least until they are committed for trial.

That Bill was not proceeded with in 1967. Since then there was the inquiry of Justice Roma Mitchell into the criminal law in South Australia, and she recommended a system of statutory suppression along the lines that I have indicated. However, the most recent adjudication on these matters, as far as the Government is concerned, is the report that it had prepared three years ago. It was made public and was the subject of legislation.

I have said since then that, because of the controversy surrounding the suppression order system, the current cases that are before the courts in this area and before the appeal courts should be allowed to proceed. A case involving a police officer was dealt with by the Full Supreme Court, and it generally reaffirmed the suppression order and restated the principles that ought to apply under the existing legislation. I understand that that matter may be the subject of an appeal to the High Court and that, if in fact there is an appeal to the High Court, there may be some further guidance from the highest court in the land.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: No. The Crown is not a party to the proceedings as such. We have the power to intervene under the legislation. We did that, and we put submissions to the Full Court urging, as I recollect, that suppression orders were being used too often and in unjustified circumstances.

The other case that I anticipated would go to the Full Court—it is hard to know just what to say about this case because everything in respect to it has been suppressed by the trial judge—has been referred to by the Hon. Mr Griffin in Parliament previously, and I have provided him with certain information about it.

Nevertheless, that case was not able to be dealt with by the Full Court because of a technical problem that existed with the appellants, who had, as I understand it, appealed against one of the interim suppression orders instead of the final one. That matter is still being considered. I hope that that case will also get back before the Full Court and that we will then have those possible High Court and Full Court decisions which will be the latest judicial interpretation of the existing law. When that is available, Parliament can decide whether it wants to take any action to change the law relating to suppression orders. Until that time, I do not intend to take any action on it.

I believe that the question of statutory suppression orders was considered by the report by Ms Branson to which I have referred about three or four years ago, and that it was rejected at that time by the Government and the Parliament. Obviously, once these cases have been decided it is up to Parliament to consider whether the existing system is satisfactory, whether it should be tightened up or whether it should be relaxed. I believe that the Parliament should have the best possible information available to it before it takes that decision.

TOURISM SOUTH AUSTRALIA

The Hon. T. CROTHERS: I seek leave to make a brief explanation before asking the Minister of Tourism a question about Tourism South Australia.

Leave granted.

The Hon. T. CROTHERS: On 25 November the Hon. Legh Davis asked a question about an anonymous North American author and made allegations about poor service from an anonymous Tourism South Australia officer. The Hon. Mr Davis alleged that all States except South Australia rolled out the red carpet for the author, who was researching a major book on Australian tourism for the North American market. Since the Hon. Mr Davis is developing a reputation as one who uses the parliamentary forum to smear the reputation of individuals without evidence and who makes allegations without checking the facts, can the Minister indicate, first, whether during the parliamentary break any information has come to hand that might pass light on this issue? If so, what is the truth of Tourism South Australia's involvement in the alleged incident?

The Hon. BARBARA WIESE: I am very happy to be able to respond to this question because, in fact, there have been some further developments since the question was asked in Parliament last year. I am sure that honourable members will be interested to know a little more about the person who asked the question in the first place. Also, it is quite important for the record to be set straight with respect to the role of Tourism South Australia in this matter and other related matters.

At the time that the Hon. Mr Davis made his unsourced attack on Tourism South Australia last year, I made clear that I could not and would not respond to questions and allegations made about unnamed people by unidentified accusers. I presumed that that response must have led the Hon. Mr Davis to realise that his question had been somewhat unreasonable and cowardly because, in fact, some days later he came to me one night while Parliament was sitting and gave me the names of the author and the officer. So I was then able to—

The Hon. L.H. Davis: I didn't give you the name of the author; I gave you the name of the officer.

The Hon. BARBARA WIESE: Excuse me, you are quite right; it was the name of the officer. As a result of that, I was able to make some inquiries. If the honourable member had a legitimate complaint to make about someone, that should have been the action he took in the first place: he should have come to me with the name of the individual so that I might be able to follow it up. Based on that information, I made further inquiries and discovered a little more about the incident.

I discovered that the officer was not directly involved in organising an itinerary or taking care of the visit of the author to whom the Hon. Mr Davis referred. The officer recalled that he met this person in Adelaide and had offered as much help as he was able to give. In fact, another officer within Tourism South Australia was assigned to take care of this person's visit. Furthermore, I discovered that no complaint whatsoever had been lodged with Tourism South Australia about the organisation or the service that the author had received while he visited this State.

This was very puzzling to me because, if the Hon. Mr Davis was to be believed, this person had returned to the United States totally dissatisfied with the service that he had received in South Australia. The Hon. Mr Davis, in the explanation of his question, said, 'As the writer described it to me, it was not a good experience.'

I was quite perplexed by this and, as I scratched my head wondering about the disparity in the two versions of events that I had heard, further information came to hand to the effect that apparently some time in late November or early December the Hon. Mr Davis telephoned the author in the United States.

An honourable member interjecting:

The Hon. BARBARA WIESE: I am not sure whether it was at taxpayers' expense, and I am certainly not sure whether it was before or after he had raised the matter in Parliament. He telephoned the author and told him that he had heard that he was dissatisfied with the service that he had received from Tourism South Australia, and invited him to write a letter of complaint. To put it mildly, the author was very surprised to receive this telephone call from a person in South Australia that he had never heard of some seven or eight months after he had visited this State. The author declined any offer or request to lodge any formal complaint, first, because he had nothing but praise for the help that he had received from Tourism South Australia and was very satisfied with the—

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: —outcome of his visit.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: Secondly, he was not interested—

Members interjecting:

The PRESIDENT: Order!

The Hon. BARBARA WIESE: —in becoming involved in any political controversy in South Australia.

Members interjecting:

The PRESIDENT: Order! The Hon. Mr Davis and the Attorney-General will cease interjecting: the Minister of Tourism has the floor.

The Hon. BARBARA WIESE: I know about this sequence of events because the author, so confused and amazed at receiving a telephone call all the way from Australia to inquire about this matter, telephoned the Regional Director of Tourism Australia in North America to express his concern, and he asked, 'Who the hell is this guy?' The author also wrote to the Tourism South Australia officer who was responsible for organising his South Australian trip and he confirmed that he was delighted with the assistance that he

had received, and said that the officer would be one of a select group of people involved in tourism in Australia who would be specifically acknowledged in his forthcoming book for the fine assistance that was provided during the course of his research.

In fact, he also added that he was sure that we would be very pleased with his treatment of South Australia in his book, and said that our coverage would be extensive. The author also said that he believed that Mr Davis had obtained his name from a South Australian acquaintance to whom he had mentioned a couple of humorous and disappointing discussions that he had had with an officer of Tourism South Australia. He said that he understood that these remarks might have been related to Mr Davis. The author said that he regretted that fact and said that he certainly did not wish to become involved in any political controversy in South Australia. He certainly had no intention of lodging any complaint because he did not consider that there was any issue to raise with Tourism South Australia; and he also said that he was completely satisfied with the outcome of his visit.

So there we have it. On the basis of some gossip that the Hon. Mr Davis seems to have picked up around Adelaide he has mounted a quite scurrilous attack on the tourism organisation in this State. It is important that two issues in particular are highlighted with respect to the Hon. Mr Davis's behaviour in this matter. First, as I said earlier, I do not know whether he telephoned this person before or after he had asked the question but I think it should be understood that, if he telephoned this person before he asked the question, it is just another example of his shooting from the lip without checking facts—for which he has become so well known; and it is the sort of thing he did when he asked the ridiculous question last year about telephone book entries for Tourism South Australia. Secondly, if the Hon. Mr Davis asked the question after he had spoken to the author in the United States, he has shown total disregard for that person's views and also his expressed wishes in this matter. In either event, it demonstrates that the Hon. Mr Davis lacks integrity and is on about political opportunism.

Yet again the Hon. Mr Davis has used the forum of Parliament to mount an unwarranted attack on Tourism South Australia, and he has shown his contempt for the image and good name of that organisation. I raise this matter in this place because, first, I think it is important that people understand and, secondly, that the record should be set straight in relation to Tourism South Australia's role in this matter and that the author left this State satisfied. In fact, the author is one of many journalists from all around the world who have visited this State and have gone away satisfied with the help that they have received from officers of Tourism South Australia.

SOCIAL WORKER QUALIFICATIONS

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister of Community Welfare a question about the qualifications of social workers.

Leave granted.

The Hon. DIANA LAIDLAW: Unlike the practice maintained by the South Australian Health Commission and all Federal Government agencies employing social workers, the Department for Community Welfare persists with a policy of employing social workers with less than the minimum qualifications recognised by the Australian Association of Social Workers. The qualifications recognised by the AASW include completion of an accredited course of either four years under-graduate training or two years post-graduate training. However, DCW has a practise of recruiting social workers who have a mere two years training. It is regularly suggested to me that this short training period does not equip social workers recruited by DCW with the basic knowledge, technical skills, nor experience to operate independently or cope with the very demanding job they confront every day.

The reality is that, since DCW established child abuse as its No. 1 priority for service provision, DCW is thrusting social workers with less than the minimum AASW qualifications into arguably the most complex area of practice. In these circumstances perhaps it is not surprising that last year the Minister conceded that mistakes were being made by the department in relation to child abuse intervention, and possibly it is not surprising that the department does have such a high level of workers compensation claims, high loss of staff and is constantly searching for new social workers. In recent months all these problems have come to a head (and certainly I have received representations from social workers within the department and also within the professions and community welfare organisations) due to the Minister's decision to press ahead with the amalgamation of DCW and the Health Commission.

This proposal for amalgamation is promoting anger and bitterness between social workers within both authorities, as they argue about their status and qualifications and their respective roles within this proposed new authority. Is it the Minister's intention, as part of the Government's current focus on child abuse and also as part of the amalgamation of DCW and the South Australian Health Commission, to insist that DCW establish a practise of employing social workers who have the minimum AASW qualifications?

The Hon. J.R. CORNWALL: Some nasty slurs have been cast on my department and on many of my social workers, and I think I should respond. The Australian Association of Social Workers only admits to its membership, as the Hon. Ms Laidlaw rightly pointed out, graduates who have done the four-year course or who have done post-graduate courses. The association is quite selective and stringent in its application of those rules and principles. I certainly do not intend to change or to suggest to the department that it should change its present policy of employing the appropriate social workers in the appropriate areas. If we were to follow the suggestion made by the Hon. Ms Laidlaw, one immediate result would be that we could not employ any Aboriginal community care or social workers.

The Hon. Diana Laidlaw interjecting:

The Hon. J.R. CORNWALL: The health units have insisted on those qualifications—rightly or wrongly—for 50 years. I am not here to debate whether or not the almoners, as they used to be known, or the four-year social workers should be the only ones employed. The Hon. Ms Laidlaw has asked me a specific question with regard to community welfare workers and social workers employed by the Department for Community Welfare. We are not elitist in our approach. As I said, we employ social workers who are empathetic with the areas in which they work. If we were to adopt the Hon. Ms Laidlaw's policies, or if a Government in which, God forbid, she were Minister of Community Welfare happened to be elected, no Aboriginal community welfare worker or social worker could be employed, because there is in this State, as far as I am aware, no Aboriginal person who has a four-year qualification.

I may be wrong: there may be one or two. Certainly, the overwhelming majority of Aboriginal community workers and social workers who are now employed would never

have gained employment had we followed the elitist policies espoused by the Hon. Ms Laidlaw. That policy would also lead us down the path of excluding many very well qualified, experienced, and sensible social workers from ethnic backgrounds, particularly from an Indo-Chinese background. It is, therefore, an elitist policy, it is counterproductive, and I will continue to oppose it as I have done ever since we have been in Government.

CRIMINAL LAW (SENTENCING) BILL

Adjourned debate on second reading.
(Continued from 2 December. Page 2369.)

The Hon. K.T. GRIFFIN: One of the main advantages to the legal profession from this Bill is that it will result in considerable activity before courts of appeal on questions of interpretation and questions of the balance which is to be achieved under this Bill in sentencing a person convicted of an offence. Putting that to one side, one should say that the objective of endeavouring to bring together in one statute or on one piece of paper all of the principles which apply to sentencing is commendable although, I suggest, difficult to achieve.

I suggest that there are a number of problems with this Bill, a number of areas where definition is lacking and where the direction to the courts is left open, and where there will need to be decisions by courts of appeal in giving guidance to the courts with respect to the interpretation of this Bill. As I say, the Bill seeks to codify the principles of sentencing and, to that extent, is supported. Most of the provisions in one form or another, although not necessarily with the same emphasis, are already embodied in the statute law and the common law. I make the general observation that, invariably, where a statute seeks to codify the law or even to re-enact the law in different words, it will mean appeals in the courts, and a long period before the principles arising from such legislation are clarified.

I have a difficulty in principle with the redrafting of legislation only for the sake of redrafting, on the basis of the added need to take matters of clarification to courts of appeal. The Bill seeks to bring together in this one piece of legislation laws relating to imprisonment, fines, community service orders, bonds, compensation to victims and a variety of other matters relating to sentencing. I must express some surprise that, after only a very short period of time since the law relating to compensation for criminal acts has been passed through this Parliament, we see that that has been repealed. The Criminal Law (Enforcement of Fines) Act was only enacted last year, and now is repealed by this Bill.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: It was only last year that it was passed. We spent a lot of time and effort on it and now it is being repealed and included in this piece of legislation.

There are two aspects of this legislation that I think need some general comment. In the second reading explanation on the Bill, which was introduced in the last sitting week before Christmas, the Attorney-General stated that the Bill had been the subject of exhaustive consideration and comment by the judiciary at all levels, the Law Society, the Legal Services Commission, prosecutors, police, defence lawyers and affected or interested Government departments.

I would like the Attorney-General to indicate the attitude of those various bodies towards this legislation, some of which bodies, obviously, only made their observations direct to the Attorney-General and not to the public at large. I have heard some concern expressed about the Bill among members of the legal profession. Also, I have heard some informal comment from judges that there are unsatisfactory aspects of the legislation, and I understand that, even in the area of the Crown prosecutors, there is some concern about the Bill. It would be helpful, to enable full and detailed consideration of the Bill, if the Attorney-General, during his reply, were able to indicate the nature of the comments which have been received from those persons to whom he referred in the second reading explanation and to whom I have just referred.

While the emphasis of the Bill is on ensuring that where fines are imposed as much as possible people will be kept out of gaol for default in payment of those fines, the objective is also to keep out of gaol those persons who for other reasons might not find prison the most appropriate form of punishment. I think we have got to be very careful about the push towards getting people out of the gaols on the basis of cost savings alone. I certainly support the objective of making the punishment fit the crime but I am not prepared to follow that blindly to the point where persons who ought to be imprisoned because of the seriousness of the offence that they have committed, even if there is no violence involved, should be released under some other form of punishment, merely to save costs. Imprisonment is an appropriate punishment from both the perspective of punishment and also the point of view of protection of the community in many instances. I would not like to see, through this legislation, the community at risk as a result of the emphasis being placed on cost savings and therefore the desirability of keeping as many people as possible out of gaol, when imprisonment may be a more appropriate punishment in all the circumstances of the offence.

It is appropriate that I indicate, for the benefit of the Council, the observations on various clauses which do need some attention, clarification, or even amendment. I hope that if I outline my observations on those clauses now it will assist the Attorney-General in preparing a reply and indicating what his position will be in the light of the issues that I have raised. I shall deal first with the definition, in clause 3, of 'prescribed unit', which relates to the term of imprisonment to apply in consequence of an offender being in default of payment of a fine. We explored this issue last year when considering the criminal law enforcement of fines legislation, where the majority view of the Council was that the amount of a fine which ought to be set off against each day of imprisonment should be fixed by statute and not be left to be fixed by regulation. I notice that the definition of 'prescribed unit', which refers to this matter, does provide for an amount to be fixed by regulation in lieu of a specific amount—where a term of imprisonment is to be fixed, $50, and where the sum in default is to be worked off by performance of community service, $100, and in each case, if some other amount is prescribed, that amount. I just raise the point that that is inconsistent with what we decided only a few months ago when considering the criminal law enforcement of fines legislation. I express the same reservation now about that proposal as I did last year.

Clause 6 has some fundamental difficulties. It provides in subclause (1):

> For the purpose of determining sentence, a court—
> *(a)* is not bound by the rules of evidence; and
> *(b)* may inform itself on matters relevant to the determination as it thinks fit.

The question quite properly arises: if it is not bound by the rules of evidence in determining a sentence, what rules, if any, are to apply? Are the rules of natural justice to apply?

Can a court take into account any form of hearsay, even fifth hand rumours? How is the court to inform itself of facts relevant to the determination of a penalty unless some rules are clearly identified? It is important in the criminal jurisdiction to ensure that even at the point of determining sentence rules are fixed by which the sentence is determined, as are the matters which the court takes into consideration in fixing that sentence. It cuts both ways. It is important for the accused in relation to such matters as may be raised by the Crown. It is relevant, of course, in relation to previous convictions: either they are admitted or they are proved. The rules of evidence apply generally to them.

It is equally important for the offender who is then convicted that the Crown is not able to introduce second and third hand allegations about the accused which might be prejudicial to the accused. Equally, it is important from the point of view of the Crown, in introducing matters in submissions on penalty, that the accused is not able to introduce all sorts of extravagant material which might then influence the court inappropriately in the fixing of penalty. It is my view, subject to any persuasive argument which the Attorney-General might put, that there ought to be rules in relation to the determining of sentence and the material which may be taken into consideration, and in the absence of any—

The Hon. C.J. Sumner: There are now.

The Hon. K.T. GRIFFIN: Generally it is the rules of evidence which apply in relation to the fixing of penalties. The Attorney-General will get a chance to respond. I want to put all the concerns on the record. He can get his replies and then we can pursue the matter further during the Committee stage. But in the light of this Bill, which now deals specifically with sentencing, it seems to me that it is important to establish, as much as it is possible to establish, what rules are to apply in relation to sentencing and not leave it to the common law.

The Hon. C.J. Sumner: Existing rules.

The Hon. K.T. GRIFFIN: The problem is that it is all very well to say the 'existing rules', but this Bill will override existing rules in every respect. So, we are really starting off with a totally new ball game in respect of interpreting the law and deciding what principles will apply to sentencing. The common law, because of this codification, will not apply. What I am really trying to demonstrate is that if you push to one side by virtue of a codification of the law all the previously long-established principles, then you are really starting from scratch. In relation to clause 6 (1), it seems to me that one is really starting from scratch.

The Hon. R.J. Ritson: There are a lot of holes which you can only fill by more legislation.

The Hon. K.T. GRIFFIN: That is right. It becomes legalistic. It is determined according to what is incorporated in the statute. So, in the absence of any other proposition it would seem to me that the rules of evidence ought to apply for the purpose of determining sentence. If the Attorney-General has some other alternative, I am certainly happy to look at that, but I do express concern about the lack of limits to which the clause relates.

There is a lack of clarity and precision in clause 6 (1). That will not help the sentencing process. Clause 6 (3) provides:

> Upon the trial of an issue under subsection (2)—

and that is an issue which might be disputed by the prosecutor or the defendant in a submission on sentence—

> the allegation in dispute must *(a)* if made by or on behalf of the prosecution be established beyond reasonable doubt; and *(b)* if made by and on behalf of the defendant be established on the balance of probabilities.

Some of the observations which have been made to me by people who have had an opportunity to look at the Bill is that that is appalling. It must mean that a factor to be relied on by the prosecution must be proved by the prosecution beyond reasonable doubt; on the other hand, if the defence wishes to rely on a fact it must be established on the balance of probabilities. However, I suggest that these two principles are mutually inconsistent.

One of the examples given to me is fairly simple. A man is charged with assaulting his wife and as a circumstance of aggravation the prosecution alleges a history of assaults over some time. The defendant denies the alleged history and maintains that the assault charged is the one and only occasion on which he has mistreated his wife. In one sense the allegation in dispute is made by the prosecution—there is a history of abuse. In another sense the allegation in dispute is made by the defendant—this is the only time I have ever abused my wife. Who bears the burden?

The next difficulty in such an example is as follows: the prosecution must prove the allegation beyond reasonable doubt and, if the prosecution fails to do so (that is, if there is a reasonable possibility that the history of abuse did not occur) then the assault must be treated as an isolated incident. However, paragraph *(b)* requires the defendant, having claimed that this is an isolated incident, to prove that fact on the balance of probabilities, that is, he must show that it is more than a reasonable possibility that this was an isolated incident. The defendant is entitled to a reasonable possibility under *(a)*, but must establish a balance of probabilities under *(b)*. I would suggest that in that example the proposals in clause 6 (3) *(a)* and *(b)* are nonsense.

In addition, there is an important question of principle. In South Australia it has generally been regarded as the law that the Crown must prove any aggravating circumstances beyond reasonable doubt. There are, I am told, varying views in other States. For example, in the case of the *Queen v Chamberlain* in 1983 (2 Victorian Law Reports 511), the Full Court of Victoria said:

> It follows that when forming his own view of facts for the purpose of passing sentence, a trial judge cannot be required to be satisfied beyond a reasonable doubt of every fact which he considers relevant. To require a judge to be satisfied beyond reasonable doubt of every relevant fact might lead in some cases to quite undue weight being given to self-serving statements offered by the accused during interrogation or evidence. Moreover, a judge may have to sentence an accused where he does not personally agree with the verdict of the jury. On the other hand, to allow the finding of fact which is critical to the determination of the sentence to be imposed upon a basis that admits of the existence of a reasonable doubt about the existence of that fact would plainly be unfair. Between those two extremes a large number of possibilities exist.

The Victorian Full Court went on to suggest that the degree of persuasion required will vary with the nature and consequence of facts in question. As a matter of policy, if the prosecution seeks to rely upon a fact as a circumstance of aggravation, the law should clearly state that the prosecution must prove such a fact beyond reasonable doubt. There should be no burden placed on a convicted person to disprove the circumstances of aggravation on the balance of probabilities, nor should the prisoner be required to establish a fact in mitigation on the balance of probabilities. That suggests that some further work needs to be done on establishing the principles referred to in clause 6.

Clause 7 deals with pre-sentence reports. Such a pre-sentence report is to include any reasonably ascertainable particulars that are not already in evidence before the court of any injury, loss or damage caused by the offence for which the defendant is to be sentenced. That obviously relates to injury, loss or damage to or suffered by a victim.

I have supported previously and support now evidence of that material being made available to the court so that the matter may be taken into consideration at the time of fixing sentence. However, there is one matter about this that is not clear, and that is the question as to whether the obligation ought to be placed on the probation officer who would ordinarily prepare the pre-sentence report and would, up until now, have been preparing those reports on the character and antecedents of the defendant, or whether the obligation ought to be one for the police or for some other agency of the Crown.

There is a view, which I tend to support, that this ought to be, instead, a matter for the police. However, I would like to have some clarification from the Attorney-General as to who is to prepare and present it to the court.

The Hon. C.J. Sumner: We are preparing an amendment on that, and it will probably accommodate your concerns.

The Hon. K.T. GRIFFIN: I am pleased that the Attorney-General is having an amendment prepared.

The Hon. C.J. Sumner: We are quick off the mark.

The Hon. K.T. GRIFFIN: Well, I would like to know what amendments there are, because it may shortcircuit some of the observations which I have to make.

The Hon. C.J. Sumner: It is just that the proposal relating to the victim impact statements in the light of experience has to be dealt with in a slightly different way. It does not interfere with the principle. It raises the issue you have raised, namely, who does the victim impact statement. That is the issue that has to be looked at.

The Hon. K.T. GRIFFIN: Yes. However, there is another issue with respect to victims which relates to the question of compensation: who is to make the submission to the sentencing court as to the compensation for the victim?

The Hon. C.J. Sumner: The prosecutor.

The Hon. K.T. GRIFFIN: I think that there may be some difficulties with the prosecutor doing it. I will raise those difficulties later when we come to the relevant provisions.

The Hon. C.J. Sumner: That is already in the existing legislation.

The Hon. K.T. GRIFFIN: It is in the existing legislation, but it has been drawn to my attention that there may well be some conflicts with the prosecutor doing it. I think that that ought to be on the record for consideration by the Attorney-General in conjunction with the other matter to which we have just referred.

In clause 7 (4) there is a reference to a pre-sentence report being furnished to a court of a prescribed jurisdiction. From my reading of the Bill, I have not been able to determine what is a court of a prescribed jurisdiction. It may be that that is to be left to regulation, but I would like some clarification of what is intended by that reference.

Clause 8 requires the court to state reasons for sentencing a defendant who is present in court. The reasons have to be stated for imposing the sentence, and the court has to cause an explanation of the legal effect and obligations of the sentence and, where appropriate, of the consequences of the non-compliance with it to be given in simple language to the defendant. The extent to which the sentencing court must give reasons and what the consequences will be if the defence does not believe that adequate reasons have been given are not clear.

I suggest that in those circumstances there will probably be an appeal. However, I would like some clarification from the Attorney-General as to what was envisaged as being the responsibility of the court with respect to the reasons for imposing the sentence.

The Hon. I. Gilfillan: Doesn't subclause (2) clarify that?

The Hon. K.T. GRIFFIN: I think subclause (2) does not clarify it. It provides:

> The validity of a sentence is not affected by non-compliance with this section.

That would appear to rule out appeals, but I am not satisfied that it does. It raises questions about the adequacy of the reasons and about the nature of the sentence that is imposed. It also raises questions about whether or not any ground of appeal can be based on the failure to comply with subclause (1), whatever it means. Also, the clause requires an explanation to be given to the defendant, and I would like some clarification from the Attorney-General as to what form the explanation of the legal effect and obligations of the sentence and the consequences of non-compliance may be.

Is it envisaged that that will be in printed form and only in the English language, or in a variety of languages, or is it an obligation that can be delegated by the court to an officer of the court to be done verbally? What is behind the requirement in clause 8 (1) *(b)*?

Clause 9 sets out the matters to which the court is to have regard in determining sentence. It must take into account such matters as are relevant and known to the court. That suggests that there is no obligation on the court to make any inquiry of counsel or of the accused and, with the various matters that are to be taken into consideration, what weight is to be given to those matters. It has been suggested to me that there are comprehensive guiding principles established at common law, that the weight to be given to those principles is well established, but that, by virtue of the codification in clause 9, it removes the clarity that has developed in the common law as to the weight which is to be given to those factors and to the obligation of the court in relation to the determination of those factors.

I point out to the Attorney that clause 9 does not pick up any reference to the impact on the victim. Presumably, that is encompassed by the all-embracing 'any other relevant matter' in paragraph *(l)*. But I would have thought that consistent with—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: Not in clause 9 dealing with sentencing principles. It deals with the circumstances of the offence; any other offences; and any injury, loss or damage resulting from the offence. I suppose that that might be it, but I think it ought to be more clearly related to the consequences to the victim, so that it is specifically highlighted.

Obviously, that is an area that the Attorney is considering in conjunction with other matters relating to victims, and I would appreciate it if he would take this on board as well and perhaps make it a much more specific reference to the impact on the victim.

Of course, injury, loss or damage may not adequately encompass all the consequences to a victim of the criminal act, for example, emotional consequences, pain and suffering which are not, I suppose, injury in the sense of being physical injury; nor will they necessarily result in loss or damage. However, they nevertheless ought to be taken into consideration as one of the matters determining sentence.

Clause 10 deals with the question of imprisonment, which must not be imposed for an offence unless, in the opinion of the court, the defendant has shown a tendency to violence towards other persons; the defendant is likely to commit a serious offence if allowed to go at large; the defendant has previously been convicted of an offence punishable by imprisonment; or any other sentence would be inappropriate, having regard to the gravity or circumstances of the offence.

While the Attorney in his second reading says that this Bill does not interfere with the law relating to contempt

and the power of the court to imprison for contempt, I suggest that clause 10 does impinge upon the inherent jurisdiction of the court to imprison for contempt, and I would like to see the court's power in relation to contempt specifically protected so that it is not compromised by the principles set out in clause 10.

I should say in relation to clause 10 that there is no definition of 'serious offence' referred to in paragraph *(b)* of subclause (1), and I would like to see some clarification given to that description. Also, I wish to take up with the Attorney whether these principles would prevent imprisonment for fraud, embezzlement, larceny or burglary because, in those circumstances, the defendant has not shown a tendency to violence; the defendant may not be likely to commit a serious offence if allowed to go at large; the defendant has previously been convicted—he may not have been convicted—of an offence punishable by imprisonment or where any other sentence would be inappropriate, having regard to the gravity or circumstances of the offence. Maybe it comes within paragraph *(d)*, which relates to any other sentence being inappropriate, having regard to the circumstances or gravity of the offence, but it seems to me that there is some measure of doubt as to whether, for those sorts of offences, imprisonment is not to be imposed, and I seek clarification of that. Clause 11 provides:

> A court, in fixing the term of a sentence of imprisonment or in fixing or extending a non-parole period in respect of a sentence, must have regard to any remission of sentence to which the prisoner may become entitled under the Correctional Services Act 1982.

That has already been embodied in the law as a result of amendments made last year, and I support it, although, as I stated previously, I have very grave concerns about the current parole system. However, I want to flag here for consideration by the Attorney in relation to maximum sentences that, even if a non-parole period is fixed, there does not appear to be any mechanism by which a court, believing that the maximum sentence ought to be served because the crime is of such a serious kind as to warrant the full penalty—the maximum sentence fixed by statute—can override what ultimately may be the one-third off for good behaviour, even where no non-parole is fixed.

Of course, that means that the maximum penalties fixed by statute will never be served. I have raised this matter previously, but more in the context of non-parole periods, and I raise it now in the context of this clause in order to seek clarification as to what remedy the Attorney sees for courts in those circumstances. Clause 12 (1) provides:

> The court must not make an order requiring a defendant to pay a pecuniary sum if the court is satisfied that the means of the defendant, so far as they are known to the court, are such that—
>
> *(a)* the defendant would be unable to comply with the order; or
>
> *(b)* compliance with the order would unduly prejudice the welfare of dependants of the defendant.

There is a subtle difference between what is included here and the proposal that the Government had some time ago, that is, to in a sense means test and impose fines according to the ability of a defendant to pay. I cannot support that principle, but I am pleased to see that that is not included in the Bill. What is included is rather an obligation on the court having fixed the fine or, if a defendant is unable to pay a fine, having fixed some other penalty. Then the defendant is given time to pay that fine or, where there is a fine in default of some other penalty being served, the defendant may not be able to pay that fine. In principle, I would support clause 12.

The only matter that has been raised with me by a member of the legal profession involves subclause (2), which provides:

> The court is not obliged to inform itself as to the defendant's means, but it should consider any evidence on the subject that the defendant or the prosecutor has placed before it.

It relieves the court from any obligation to make an inquiry and is suggesting that subclause (2) be deleted. The argument is that there is an inconsistency between subclauses (1) and (2) and that the way to resolve those inconsistencies is to delete subclause (2).

I am not proposing that at this stage but I raise it for consideration by the Attorney-General. Clause 13 requires the court, where it is considering a fine and a pecuniary sum by way of compensation, to give preference to compensation. It is desirable to compensate victims, and last year I supported legislation to broaden the basis upon which courts could order an offender to pay compensation to a victim, such order being made at the trial of the offender. However, clause 13 is drafted in such a way that it may be interpreted that the court is prevented from imposing a sentencing package other than a fine to ensure that an appropriate penalty is imposed.

I see no reason at all why a court should not have the power to order the payment of compensation and, if it is unlikely that a fine can be paid, to order community service or some other punishment. The two could comfortably go hand in hand, but concern has been expressed to me that in looking at the fine interpretation of clause 13 the package approach where compensation is to be considered may be beyond power.

The Hon. C.J. Sumner: It shouldn't be.

The Hon. K.T. GRIFFIN: I agree, but I raise this matter because I think it needs to be looked at. It may be that some amendment can be proposed to put that question beyond doubt. Clause 14 provides for discharge without penalty, and it really opens Pandora's box. Undoubtedly, there are cases where it is proper and merciful to decline to record a conviction or to convict and discharge without penalty. However, there are some concerns about the ramifications of the proposal in clause 14. If the power is to be given to, say, the District Court and the Supreme Court, is the offender's prior record to be taken into account?

As it is drafted, clause 14 relates only to the circumstances of an offence being so trifling and, in fact, the way it is drafted may prevent the court from taking an offender's character into account. I think that it would be appropriate if the principle of clause 14 remained—and I am not averse to that—and that there be some clarification of the circumstances in which the courts can exercise this power. I do not think that the mere reference to inappropriateness gives adequate direction to the court, or adequate guidelines to allow the course of action proposed by clause 14 to be pursued.

The only other matter that I raise in relation to clause 14 is subclause (2) which provides:

> A court may exercise the powers conferred by this section notwithstanding any minimum penalty fixed by a special Act.

That means that this Bill will override minimum penalties. My view is fairly clearly known about minimum penalties. I have an aversion to minimum penalties but, if they are in special Acts of Parliament by a majority of votes in both Houses, we must acknowledge that the majority view of Parliament is to have such minimum penalties. However, the context in which they can be overriden has been, up until now, fairly limited. To provide for this in clause 14 and in clause 16 I think leaves open the question of whether it is appropriate to override the provisions of special Acts in this way. The point I am making is probably more

pertinent to clause 16, although it is also relevant to clause 14. Clause 15 provides:

> Where a court finds a person guilty of an offence for which it proposes to impose a fine (but no other penalty) the court may, if of the opinion that the defendant is unlikely to commit such an offence again and that the offence was trifling, impose the fine without recording a conviction.

That suggests that an offence that merits only a fine is in some way less serious than other types of offences—but that may not be so. I suppose one can give the example of a receiver having been fined and the court taking the view that the greater penalty is to hit such an offender in his pocket. The criterion is limited to whether the defendant is likely to commit such an offence again rather than whether he is likely to reoffend against the criminal law. That is a matter of concern, that it seems to be limited to the specific offence with which he or she is then convicted. In addition, the terminology is different from clause 14 because it refers to the expression 'the offence was trifling'; clause 14 refers to the offence being 'so trifling'. Clause 15 does not include the next step (which I think is important) of a court forming the opinion that in all those circumstances it is inappropriate to record a conviction. Therefore, that clause also needs some attention.

Clause 16 deals with special Acts that fix minimum penalties. It is interesting to compare the power given in this clause with the extremely limited power of a court to reduce a minimum penalty in cases such as exceeding .08 per cent for a breathalyser test or driving under the influence of alcohol or a drug. The effect of the Road Traffic Act for exceeding .08 per cent is that the minimum disqualification can be reduced only if a court is of the view that there are exceptional circumstances. But under clause 16—for causing death by dangerous driving—the minimum penalty could be reduced by virtue of character, antecedents, age, or any other extenuating circumstances. The public is often heard to complain that penalties are out of balance: that is, you are more severely punished under the drinking and driving laws than for committing a criminal offence and, as presently drafted, I suggest that this clause will further enhance that already apparent anomaly.

If clause 16 is to have precedence, the principle should be made clear either in this clause or by, I suggest, repealing those parts of special Acts that prescribe the circumstances in which a penalty may be reduced below the minimum—as I have indicated, the Road Traffic Act or even the Motor Vehicles Act. If clause 16 is to prevail in all cases, it then becomes a matter of policy whether a court should be able to reduce the minimum penalty in other than special or exceptional cases.

As presently worded, an offender would not have to establish special or exceptional cirumstances under clause 16, so the test is less stringent than that now applied under the Road Traffic Act and the Motor Vehicles Act. They are inconsistencies and problems which, again, I think ought to be addressed before we seek to override provisions in special Acts. Clause 17 provides that where, on convicting a defendant of an offence, the court thinks the sentence provided by the special Act inappropriate to the circumstances of the case, certain consequences are to prevail. This raises the same question I have raised in relation to clause 16.

That is, if Parliament has seen fit in a special Act to specify particular penalties, why should those penalties not prevail unless there are special or exceptional circumstances? As drafted, clause 17 simply allows the court to impose alternative penalties if the court considers that those penalties specified by the special Act are inappropriate to the circumstances of the case. I make the point here that it is not clear what 'inappropriate' means or what factors the court must take into account in deciding whether a particular penalty is inappropriate, and what limits are to be imposed upon the discretion of the court. I suggest that there is no clarity or precision in this clause.

In reference to that, I also refer to clause 19 which, in paragraph *(b)*, provides that nothing in this division derogates from a provision of a special Act that expressly prohibits the exercise of a power vested in a court by this division. That is all well and good for the future, but it does not really accommodate the position where special Acts already contain special provisions, and there is no indication by the Attorney-General that there is going to be any review of those special Acts to make a conscious decision whether they should be subject to this Bill or whether they should not be affected by it. I think that some attention has to be given to that question before we pass this Bill into law.

Clause 20 provides that where a court imposes a sentence of imprisonment and does not suspend that sentence, the court must specify the date on which or the time at which the sentence is to commence or is to be taken to have commenced. I support the clause. The only question I raise is whether there ought to be some fail-safe provision that provides that, where a court fails to specify the date, some other date comes into play automatically. I guess it is unlikely that the courts will overlook doing this, but I think that at least one has to be ready for such a situation with a contingency plan.

Clause 23 provides that where a court imposes a fine it may specify a period within which the fine must be paid or direct that the fine be paid in instalments of a specified amount at specified times or at specified intervals. That is what the courts do at the moment. I support the power being in this Bill and support the court being able to take into account the means of the defendant and the impact on the dependants of the defendant. It is interesting to note again, as I noted earlier, that this does not go to the question of a means test of a fine but, rather, to a means test of the time within which a fine will be payable.

The point that has been made to me by a legal practitioner in relation to this clause is that the court is not obliged to inform itself as to the matters referred to in subsection (2) (that is, the impact on the dependants and the defendant's ability to satisfy the order) but is to consider any evidence that the defendant or the prosecutor has placed before it. The suggestion has been made that subclause (3) ought to be deleted, although I am not proposing that.

The observation has been made that, in fact, the courts ought to make some inquiry as to the ability of the defendant to make a payment within a particular time, but I raise it only because the practitioner who drew it to my attention was concerned to see that this was, in fact, drawn to the attention of the Council. I think that it will create a great deal of work for the court to make those sorts of inquiries, although I do recognise that where, for example, a defendant is unrepresented it would be, I think, in the interests of the defendant that some submission be made to the court on the time within which a fine is to be paid and the impact of the fine on the dependants of the defendant and the ability of the defendant to satisfy the order.

If the court does not have an obligation to inform itself as to those matters in those circumstances, it seems to me that there may well be some hardship created for the defendant. It may be that in those cases where the defendant is not represented the court could be obliged to inform itself, by questioning of the defendant, of the matters referred to in this clause. However, I raise that only as a suggestion for consideration.

I briefly return to clause 21 and make the point that, while I support the general thrust of this clause, it does raise the question whether the court ought to have any discretion about the imposition of a sentence cumulatively upon some other sentence, where the offence was committed while the offender was on parole. I am sympathetic to a submission made to me that there ought to be some discretion in the court, but that the principle which is established in clause 21 ought to be the rule rather than the exception. Again, I am not proposing any amendment at this stage. It is just a matter which I think should be drawn to the attention of the Attorney-General.

I would like some clarification in relation to clause 26, which provides that, notwithstanding any other Act or law to the contrary, a defendant may not enter into a bond except under and in accordance with this Act. A bond in the definition is an agreement, not being a bail agreement, entered into pursuant to the sentence of a court, under which the defendant undertakes to the Crown to comply with the conditions of the agreement. I raise the question whether that definition encompasses those bonds that might be made under the Justices Act, particularly in relation to the keeping of the peace.

There is a suggestion that the way this is drafted would eliminate all bonds made under the Justices Act in relation to the requirement to keep the peace, and I would like some clarification of that. I draw attention to clause 27, in relation to my earlier comments about this legislation overriding special Acts which prescribe minimum penalties, and this merely relates to those earlier comments as to whether that is an appropriate way by which, generally speaking, minimum penalties should be overriden, notwithstanding the provisions of a special Act which may have been passed prior to this Bill passing Parliament and becoming law.

Clauses 28 (1) and 29 (1) provide for the imposition of a bond by the court. Clause 28 provides for suspension of imprisonment upon the defendant entering into a bond to be of good behaviour and to comply with the other conditions, if any, of the bond. Clause 29 (1) provides that where a court finds a person guilty of an offence it may discharge the defendant without recording a conviction or imposing a penalty, upon condition that the defendant enter into a bond. I raise the point that no guidelines are given. It really allows the court an unfettered discretion. That may well lead to a large number of cases where the appellate court will be obliged to specify the criteria pursuant to which it will or will not be appropriate to exercise those powers. I should say that the Offenders Probation Act covers some guidelines in relation to the suspension of sentences of imprisonment on condition that a bond is entered into, and also for the discharge without conviction upon a bond being entered into. I raise the question of whether some guidelines can be included in these two clauses, to ensure that the appeals are kept to a minimum.

Clause 28 (2) provides that the suspension of a sentence is not permitted if it is to be served cumulatively upon or concurrently with another term of imprisonment. I have been informed that not infrequently judges have expressed a view that this restriction prevents them from setting an appropriate sentencing package. For example, the court may feel that a short term of imprisonment, followed by a period during which the offender is on a bond with a suspended sentence hanging over his head, is the most appropriate package. I wonder if it is appropriate to enable the court to have an option, in specified circumstances and with proper guidelines which will enable the court to have that broader range of options available to sentence an offender. Clause 34 (2) deals with the variation or discharge of a bond, and provides:

> If the Minister of Correctional Services is satisfied, on the application of a probationer—
>
> *(a)* that it is no longer necessary for the probationer to remain under supervision; and
>
> *(b)* that it would not be in the best interests of the probationer to remain under supervision, the Minister may, by instrument in writing, waive the obligation of the probationer to comply any further with the condition requiring supervision.

I object to that provision. I do not believe that it is a power which ought to be exercised by the Minister of Correctional Services. It is a power which ought to be exercised by the court alone, and I would propose that that discretion be vested in the court and not the Minister.

Clause 42 deals with restitution of property. I have indicated earlier in respect of compensation and restitution that I support the concept. I supported it last year and I support it here, but I raise the point that, if the court is empowered to restore property to an appropriate person who appears to be entitled to possession of that property, I think there ought to be a right of audience before the court by any person who might wish to make a representation and who might reasonably be expected to have a claim to possession of that property and, further, that the clause ought to also provide for some audience to be given to any person who might reasonably be expected to have an interest in that property. There is no such provision at the moment. It may be that the rules of court will deal with that, but I would be much happier to have it included in the Bill. Clause 43 (2) provides:

> An order for compensation may be made under this section—
>
> *(a)* either on application by the prosecutor or on the court's own initiative; and
>
> *(b)* instead of, or in addition to, dealing with the defendant in any other way.

Again, as I have supported this in the past, I support it now. There ought to be an adequate power for the court to award compensation to a victim. This application is to be made by a prosecutor and one would generally expect that to be the most appropriate way to deal with such an application. But it has been put to me that there could be difficulties with a prosecutor putting an application on behalf of the victim for compensation, and the circumstances may be where a prosecutor has been required to disclose previous inconsistent statements made by a victim or where a prosecutor in summing up to a jury is required to acknowledge the deficiencies in the evidence of a victim, as the prosecutor is an officer of the court and has a duty to put the facts to the court.

This provision suggests that there may be some conflict with the prosecutor representing the victim in those sorts of cases. I wonder whether there ought to be included in this clause some provision which would allow victims to be separately represented at the point of making the application for compensation to the court. Then, of course, a person other than the Crown prosecutor representing the victim would quite obviously owe a duty of care to the victim and would be an advocate for that victim for the court.

This clause also raises the question of negligence on the part of a prosecutor and whether the victim is then entitled to sue the prosecutor for damages arising out of what might be alleged to be negligence. I raise these issues because, although it is part of the law at present, they have recently been drawn to my attention, and I think they are important questions which need to be addressed.

Victims should be informed of their right to apply for compensation and, in my view, there should be a provision

for that notice to be given. There should also be an opportunity for the victim to know of the time and place of the hearing so that that victim can attend personally or otherwise be adequately represented. However, it is a difficult question and I do not resile from that difficulty. Ideally, the prosecutor should make the submissions; on the other hand, if they are contentious and if there are conflicts between the duty of the prosecutor to the court and to the victim, there should be some provision for resolution of that conflict.

Clause 43 (5) provides:

> No order for compensation may be made under this section in respect of injury, loss or damage caused by, or arising out of the use of, a motor vehicle, except damage that is treated by virtue of subsection (4) as having resulted from an offence.

Have the full implications of that blanket prohibition been considered? There may be some unfortunate consequences of the blanket prohibition. It also seems that this will not allow a claim for injury which may not in fact be covered by the compulsory third party bodily injury policy over all motor vehicles. The law has been amended and it means that certain areas of injury, loss or damage are not now covered under that compulsory third party scheme even where the accident arises out of some association with a motor vehicle. I raise this matter because it has been drawn to my attention and it is relevant to issues of compulsory third party bodily injury insurance which I have raised previously.

Clause 45 provides that a court of summary jurisdiction may make an order for costs against a person found guilty of an offence. The question frequently raised in the public arena, or at least in representations to me both as Attorney-General and as shadow Attorney-General (and I suspect also to the Attorney-General in both capacities), is why orders for costs cannot be more readily made against the Crown in respect of, more particularly, indictable offences. I believe that issue should be addressed. I know that this clause deals with courts of summary jurisdiction, and I know that there are some powers for courts of summary jurisdiction to make orders for costs against a complainant but, from memory, that is more limited. Does the Government have any policy on the question of costs being awarded against the Crown in all cases where a person has been found not guilty of an offence?

Clause 52 (6) deals with a warrant for the sale of land or goods in default of payment of a pecuniary sum, which might be a fine, compensation or some other order. For the purposes of determining an application the court may issue a summons requiring the attendance of such persons as the court thinks fit to call before it. It seems to me that there ought to be some provision that requires notice to be given to persons who might reasonably be expected to have an interest in the goods and also to give them a right to be heard, and not just upon a summons issued by the court, but a right to, in a sense, intervene. There is no provision for that in this clause.

They are the principal matters that I want to raise in relation to this Bill. They are important matters in the context of codifying the law relating to sentencing, recognising that by virtue of the codification we really start the whole process of sentencing and the development of sentencing principles from scratch. In the context of the remarks I have made I support the second reading of the Bill in the expectation that there will be some clarification of the issues I have raised and in the knowledge that there will also be some amendments during the Committee stage.

Bill read a second time.

STATUTES AMENDMENT AND REPEAL (SENTENCING) BILL

Adjourned debate on second reading.

(Continued from 2 December. Page 2371.)

The Hon. K.T. GRIFFIN: This Bill runs in tandem with the Criminal Law (Sentencing) Bill on which I have just spoken. It amends the Acts Interpretation Act, the Corporal Punishment Abolition Act, the Correctional Services Act, the Criminal Law Consolidation Act, the Justices Act, the Local and District Criminal Courts Act, and repeals the Criminal Law (Enforcement of Fines) Act 1987 and the Offenders Probation Act 1913. The Government proposes introducing a scale of fines and periods of imprisonment by reference to divisions so that in legislation in future the fines and periods of imprisonment can be referred to by reference to a division, and such penalties can be increased or reduced periodically by merely amending the penalty referred to in a division rather than going through every particular statute to change the penalties for each specific offence.

Those penalties that are fines can be increased every two or three years to reflect inflation without having to amend each particular Act of Parliament where a penalty is imposed. The Government says that it intends to amend progressively legislation already on the statute book to accommodate those divisional penalties, and I would generally support that view. The scheme that has been mooted over the past two or three years has some merit, although we have to ensure that there is some consistency in fixing the penalties for similar offences.

The divisional penalties range from 15 years imprisonment and a $60 000 fine in division I down to a division XII fine of $50. It is possible under the scheme envisaged in the Bill to impose a period of imprisonment in one division along with a monetary penalty from another division, so that there is flexibility in the way in which they can be imposed by specific Acts of Parliament. Obviously, some statutes will not refer to the divisions of penalties proposed by the Bill because they far exceed the penalties with respect to offences such as trafficking in drugs under the Controlled Substances Act where the penalties are very much higher than the 15 years imprisonment and the $60 000 fine in division I.

I refer to only several of the clauses at this stage with a view to having some clarification of them. I will make other comments during the Committee stage. Clause 20 repeals section 297 (5) of the Criminal Law Consolidation Act, and that subsection provides that the court should have power to order to a widow of a man killed while endeavouring to apprehend any person charged with any felony or misdemeanour such sum of money as the court in its discretion thinks fit; such payments can be made to a child or children or, in certain circumstances, to a father or mother. The provisions of the Criminal Law (Sentencing) Bill do not extend to this. Therefore, I raise the question why clause 20 is necessary and whether it is necessary to provide in the Criminal Law (Sentencing) Bill, if it is to be deleted from this Bill, some provision akin to it.

I draw attention to one set of circumstances where a pursuer could be killed in an endeavour to apprehend the person without any fault on the part of the offender, for example, crashing a car or being run over by an innocent motorist. For this reason the repeal of the section will in fact reduce the rights of citizens rather than ensuring that they are adequately covered by the Criminal Law (Sentencing) Bill.

I draw attention to clause 17 which repeals sections 77 and 77a.

Section 77 deals with persons convicted of offences such as rape, unlawful sexual intercourse with a person under the age of 12 years, indecent assault and a variety of other sexual offences. It provides that, where that person is suspected of suffering from a venereal disease, the court can direct that the prisoner be examined and, if venereal disease is established, after the expiration of the term of imprisonment the person can be detained at Her Majesty's pleasure until he no longer suffers from that venereal disease.

The Government is seeking to repeal that provision. One can have some misgivings about that because of the circumstances in which a person may have a venereal disease and, by virtue of that, seek to infect some other person with that venereal disease. That is a deliberate act. On the other hand, I do not think that that was what was proposed to be covered by section 77, and it is for that reason that at the present time it is probably appropriate to allow that section to be repealed.

However, with respect to those offenders who have venereal disease or even AIDS the law does not in my view adequately address the issue of those persons who commit their offences deliberately to infect others with one or other of those diseases. There have been cases in the United Kingdom and in the United States of America where, particularly with an AIDS sufferer, that person deliberately committed rape on as many occasions as possible with the express intention of pulling down as many other people with the disease as he possibly could before he died.

In those circumstances I do not think the law deals adequately with the penalty to be imposed upon that sort of person. Notwithstanding that, we can probably support the repeal of section 77. On the other hand, section 77a deals with the detention of persons incapable of controlling their sexual instincts. The Attorney in his second reading speech argues that the court already has a variety of means available to it to extend sentences, but I contest that point. I do not believe that the courts have adequate powers to extend sentences if section 77a is repealed.

I have serious reservations about the repeal of this section because, if it is repealed, it is a power that the courts will lose, and it will therefore mean less protection for members of the public in those limited circumstances—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: —where section 77 can be invoked. The Attorney interjects and says that section 77 is not necessary.

The Hon. C.J. Sumner: I said, 'Not necessarily.' It can be done through other sentencing options.

The Hon. K.T. GRIFFIN: I do not agree. I do not believe that the court has the power to impose some other longer sentence or other detention or requirement upon a person who cannot control his or her sexual instincts. By the repeal of section 77a, the Government seeks to reduce or remove from the court one of the powers which presently is available. It might be used only on limited occasions, but I believe that nevertheless it is important to have it in the Act.

The Hon. C.J. Sumner: The judges do not like it.

The Hon. K.T. GRIFFIN: If the judges do not like it, they have to wear what Parliament gives them. I have not heard of any judges who do not like that power. Certainly, former Justice Mitchell did not like it when she reported in the Mitchell committee report in the middle of the 1970s. However, other judges have expressed the view to me, more so in relation to habitual criminals and persistent offenders, that it is important for the court to have these powers to extend sentences in very limited circumstances.

With respect to habitual criminals and persistent offenders referred to in clauses 23 and 28 of the Bill, the Government seeks to repeal those provisions, arguing that the Mitchell committee recommended the repeal. I do not dispute that they recommended it, but I disagree with them. Also, the Attorney argues that the court already, by using the mechanism of an habitual criminal, is placing that criminal in double jeopardy. I would argue strongly against that conclusion by the Attorney. I do not believe that it is a matter of double jeopardy: it is a matter of the court having the power to declare a person an habitual criminal or a persistent offender and then, in those limited circumstances, to have power to protect the community by more extensive orders than would otherwise be available to the court. The fact is that, if a person commits an offence and is convicted without the declaration that the person is an habitual criminal, the court has no power to protect the public, other than to say, 'You are in for a particular period. Once you have served that sentence you are out, even though you are going to be a danger to the public.' Therefore, I would oppose the repeal of those sections of the Criminal Law Consolidation Act.

It has been drawn to my attention that section 364 of that Act requires amendment, and I draw it to the Attorney's attention to ensure that, when a person on bail is appealing to the High Court of Australia, the sentence does not continue to run while that person is on bail. Presently the law provides that, when a person appeals to the Full Court of the Supreme Court of South Australia and is on bail pending that appeal, the sentence does not continue to run. The same ought to apply to an appeal to the High Court.

Those are the major matters to which I wish to draw attention in the Bill. Obviously, the Opposition will support some parts of the Bill and will oppose others and seek to amend others still. For the moment, we support the second reading.

The Hon. I. GILFILLAN: I wish to refer briefly to clause 17, which seeks to repeal sections 77 and 77a. I indicate that the Democrats support the repealing of both those sections, and I would like to comment on that. It seems to me that both those sections are particularly inappropriate in any modern concept of justice. To translate them in reasonably accurate terms, they impose a penalty in the first instance on a sufferer or carrier of venereal disease because that person happens to be in a post-sentencing situation in a prison. If that were to be logically applied, it would mean that anyone else who was carrying a venereal disease outside a prison should be regarded as being equally culpable and should be in prison.

I would say without any question of doubt that section 77 is inappropriate in today's interpretation of justice. Section 77a carries an emotional overload in that the public can easily be whipped up into a fear that, because some person has been determined as being likely to offend again, they are better protected if that person is kept in custody indefinitely. However, the same judgment is not made with anything like the same savagery on a whole host of other people, including those who have completed sentences and who go out and prove that they will offend again and who, it is predicted with some certainty by those who have been supervising or handling them, will offend again.

The logic there is that, if one takes that application of justice to apply only to those who are likely to reoffend in a sexual context, or the community decided that a person showed a strong indication that he might offend even for a

first time, they could then be imprisoned under the same principle of justice that applies under section 77a. It means that a person has not only double jeopardy but also a double penalty; having paid a penalty for an offence, they continue to be punished on the basis that they may offend again. Therefore, I clearly indicate our support for the repeal of both sections. I think that the justification expressed in the Attorney-General's second reading explanation spells out a very good argument as to why they should be repealed, along with the comments that I have made.

I think it is important that we view as dispassionately as possible the situation of every person at all times being entitled to a fair and just assessment of their situation without being motivated by what appears to me to be fear and concern, which are applied with a heavy degree of discrimination to people who find themselves in a particular situation. So, it is a very prejudicial application of justice. However, our complaint goes further. I wrote to the Attorney-General to inquire whether, if this Bill passed, those people who are currently kept in custody at Her Majesty's pleasure under sections 77 and 77a would have access to the benefits that will be forthcoming for those people who may be in exactly the same situation in the future. In other words, I wanted to know whether there would be some form of retrospectivity in relation to reassessing people who are held in prison at the moment under sections 77 and 77a. As yet I have not had a definitive answer from the Attorney, but no doubt he will reply to the second reading debate.

I rather fear, from comments from the department, that those who are currently serving sentences will not benefit from what seems to me to be a more enlightened approach under this Bill. If they do not have the opportunity of reappraisal in the light of legislation which would be effective if this Bill passes, I make the analogy that it is rather like a murderer being sentenced to the death penalty and, while he is waiting for the sentence to be imposed, the law is changed and the death penalty is removed from the statute book. However, because that person had been sentenced to death prior to that happening, the death sentence is still imposed, even though when the sentence was carried out it was no longer legal to enforce that penalty. I ask the Attorney-General to think about this situation and, if the informal indication that I have received from his department is correct, I ask him to reconsider.

It means that those who are serving time in prison at the moment under section 77 or section 77a are serving a much heavier sentence in so far as it could be the equivalent of a sentence of natural life—it is indeterminate. Those who are serving such a sentence have no knowledge of when they can expect to be released. Such a sentence is often much heavier than a sentence imposed on someone who is convicted of murder today. In those circumstances, I think it is essential that those people who are serving indeterminate sentences have the advantage of being reassessed through being able to benefit from this Bill when it becomes law. Incidentally, apart from those observations I indicate that the Democrats support the second reading.

The Hon. R.J. RITSON: I rise to address matters involving sections 77 and 77a. I begin by saying that I support the retention of section 77a, even though there are many things wrong with it. The Hon. Mr Gilfillan dealt with the issues as he saw them in relation to penal tariff justice, punishment and correction. However, there is another issue, namely, that of community protection when a person is chronically unable to obey the law. There is little point in dealing with certain types of chronically recidivistic and possibly mentally abnormal offenders in terms of penal tariff. This is certainly recognised under the law of insanity, which of course deals with the cognative disorders principally and not with the effective or emotional disorders.

There are scattered areas throughout the law where emotional disorders are dealt with in isolation. I suppose one of them—not in this jurisdiction but in others—would be the question of infanticide where, if a mother kills her child of less than 12 months, she cannot be convicted of murder. It is assumed there that there is some depressive or emotional disturbance related to childbirth. The anomaly or hole in that situation is that, if she attempts to kill all her children and herself and a child older than 12 months dies, but the mother and a child younger than 12 months survive, she does not have the benefit of infanticide, even though it is the same act and the same psychopathology.

This notion of people being unable to deal with their sexual instincts is very much a nineteenth century notion: it is a case of the law limping along behind medicine. It serves its purpose in that it provides for a discretionary executive protective detention of a person who for some reason or another cannot control their sexual instincts. Of course, there are also people who cannot control their violent instincts, and there are people who cannot control their arsonistic instincts—the desire to burn down something to watch the glow. Whether the early legislators were more concerned with sexuality rather than arson I do not know.

In Britain all these things would be dealt with where an offender was perhaps mentally or intellectually subnormal and thereby unable to control his sexual or arsonistic instincts or whatever or due to some other psychological or hormonal condition. That would be regarded more scientifically as what it is, namely, a type of diminished responsibility. The courts would be able to make orders for discretionary detention because the 'Governor's pleasure' can be almost anything from weekend leave to 'never to be released'. That discretionary detention would be usually in a place of non-punishment but safe detention, such as Broadmoor or Rampton.

Broadmoor is mostly for pyschopathic people and Rampton for the intellectually sub-normal. Here we have a patchwork of different bits of law which recognise that some people will continue to offend for some reason or another regardless of what happens to them. There is not much point in putting someone into prison to serve a penal tariff and then, when that person re-offends a few days after release, doing it again and again and again for the next 25 or 30 years. There are some classic instances of such people going in and out of prison all their lives when, in fact, their lack of ability to control could have been recognised earlier and would perhaps have been dealt with better by the Governor's pleasure. For that reason, I would prefer to see this section remain until such time as the Government can cover the whole field and look at what makes a person an habitual criminal or someone unable to control their violent, sexual or arsonistic instincts. Some of those people will be suited for the penal system; others will be suited for a different sort of Governor's pleasure. That is just to begin to talk about something entirely different from a correctional system, non-parole periods and that sort of thing.

As I say, I do not know why it should just be there in relation to sexual offenders rather than other chronically violent re-offenders. I will not stand here without professional training in the law and try to instruct the Attorney-General in detail as to what should be done about it. There is not an easy solution, but I would put it to him that there is an area to be looked at from the more fundamental principle of why some people are incorrigible. Are some of them better dealt with other than by penal tariffs but by

protective detention in selected cases, with a law that gives such powers not only in relation to the sexual instinct but various other things, notably violence and arson? I have no perfect answer, but I leave the Attorney-General to think about it.

Section 77 is of interest because it refers to veneral disease. I suppose traditionally our concept of venereal disease was disease which was only transmitted sexually and was thought of in terms of syphilis, gonorrhoea and two or three other conditions which are difficult to spell. Increasingly, of course, people realised that other non-specific infections, infections not specific to sexuality, can be spread sexually as well as in other ways. These include thrush, herpes, warts, chlamydia and other things like that, so the concept of sexually transmitted diseases rather than veneral diseases is now used. Of course, the latest and incurable and fatal is AIDS.

Whilst the other diseases were inconvenient they were treatable and not inevitably fatal, as it would appear that AIDS is. I wonder whether, if section 77 remains, it may sometimes be useful for the detention of someone who is known to have AIDS or known to be AIDS antibody positive and who is exhibiting anti-social behaviour which endangers the whole community. One reads of certain individuals, perhaps totally embittered by life's slings and arrows, and believing themselves to be under sentence of death from this disease who may wilfully, maliciously and without regard to any other legal prohibitions on their behaviour, spread the disease, taking it out, as it were, on society.

There could be the occasional instance where a person unable to control those feelings would tend to spread this disease widely unless restrained under some such order. If we repeal section 77 the day may come when we wish to have it back, because it is possible that this disease threatens the whole future of the human race. Again, I leave that thought with the Attorney-General. It is a provision that I doubt is used very often; it is probably almost never used. If that is so, is there any urgent need to repeal it and, if not, why not just hang on to it for a little longer in case it is needed with respect to a small handful of people and their behaviour in relation to AIDS?

Having put those thoughts before the Attorney-General, I do not propose to move any amendments or seek to oppose those repeals, but I think that what I have said should be thought about by the Government. I support the second reading.

Bill read a second time.

LOCAL GOVERNMENT ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 1 December. Page 2287.)

The Hon. DIANA LAIDLAW: When I last spoke on this Bill I sought leave to conclude. At that time I indicated that the Liberal Party was inclined to support the second reading of this Bill but to reserve its decision on whether to support the third reading. I noted that we had a number of fundamental objections to provisions in this Bill, and highlighted that, if amendments we proposed to move were not successful, we would not be prepared to support the passage of the Bill. Today, some two months later, nothing has come to light to persuade the Liberal Party to change from that course.

Indeed, letters that we have received from councils in that two month period have, in fact, confirmed our resolve to follow the course I outlined last December. In December, I noted at some length the reasons why the Liberal Party was adamant on the following matters: that councils should be provided with the prerogative to set a minimum rate; that councils should have the capacity to levy differential rates determined on the use of land or locality; that the proposals in the Bill for one way movement as the basis for valuation and the billing of rates were counterproductive and needlessly restrictive; and our fourth main point was that the Bill contained an excessive number and range of provisions for the Minister's approval, consent, consideration and investigation. We believe that these matters severely impinge on council discretion and the principle (which we hold very dear) of local accountability.

Following my comments, I sent out to councils a copy of my remarks outlining the position that I put on behalf of the Liberal Party. I have been inundated with correspondence from councils since then. I do not intend to refer to all these letters in full or, in fact, in part, other than to highlight—

The Hon. C.J. Sumner interjecting:

The Hon. DIANA LAIDLAW: I appreciate the Attorney-General's recognition of the favour, perhaps, that I am extending to this Council by not reading all the letters. However, by not doing so I would not want members in this Council not to fully appreciate the gravity of concerns that councils across the State—metropolitan and country—are expressing in relation to this Bill. Following the speech that I made last December I received letters from the following councils: City of Mount Gambier, City of Munno Para, District Council of Riverton, District Council of Pirie, District Council of Port MacDonnell, District Council of Tatiara, District Council of Willunga, Corporation of the Town of Gawler, Corporation of the Town of Renmark, District Council of Mount Remarkable, City of West Torrens, City of Elizabeth, City of Enfield, District Council of Mannum, District Council of Murray Bridge, District Council of Waikerie, City of Prospect, City of Burnside, City of Unley, District Council of Penola, District Council of Gumeracha, District Council of Loxton (that may well be a second letter from that council), two or three further copies of correspondence from the City of Elizabeth, and the City of Waikerie, and the City of Mitcham. In addition, I have received correspondence from the Chamber of Commerce at Elizabeth and the Chamber of Commerce and Industry based at Wayville.

All these letters endorse resoundingly the course that I outlined last December on behalf of the Liberal Party, and in general they urge the Liberal Party to continue the fight on their behalf on the matters of minimum rate, differential rate, one-way movement and ministerial authority. The Minister would be aware of the strength of feeling of councils on those four principal matters, and also on other matters, because a number of the letters to which I have just referred came from councils which had enclosed copies of correspondence that they had sent to the Minister, following receipt of a letter from the Minister dated 4 December.

It is also clear from the letters from the councils to which I have just referred that, in addition to calling on Parliament to fight for the interests that they hold very strongly, they almost, to a council, plead that this Bill not be proceeded with unless they can maintain the discretion to set a minimum rate, and that is notwithstanding the number of positive provisions which all the councils, as does the Liberal Party, acknowledge are incorporated in the Bill. However, generally the councils would prefer to see this Bill sacrificed rather than tolerate what they consider to be offensive and

unacceptable impositions incorporated in it. Those comments are in relation to the position of councils at large.

I highlight that fact because when speaking on this matter on 1 December last year I did not have the advantage of having received a wide range of correspondence from individual councils. At that time the Liberal Party and I, and particularly my colleague in the other place, the Hon. Bruce Eastick, essentially had negotiated with the Local Government Association. It is the association's view that the minimum rate question is a non-negotiable matter. It is adamant that if the Bill does not incorporate provisions for a council to establish a minimum rate then it is not prepared to see the passage of this Bill. That advice was presented to the Hon. Bruce Eastick and me at a meeting with the Local Government Association on 4 February. I understand that following that meeting the same message was to be related to the Hon. Ian Gilfillan, Leader of the Democrats.

The Hon. I. Gilfillan interjecting:

The Hon. DIANA LAIDLAW: I do not want to steal the Hon. Mr Gilfillan's thunder, but certainly I was led to believe that that same message would be related to the Democrats, and I certainly hope that it was presented to them with the strength with which it was presented to the Liberal Party. I hope that the Local Government Association did not temper its words to the Democrats and provide them with a different story from that provided to the Liberal Party. I would just say in passing that it has been a most interesting experience dealing with the Local Government Association on this matter, and the position that I highlighted last December tends to change depending which individual one is speaking to.

When I last spoke on this Bill I noted that I had that day received a surprising letter from the President of the Local Government Association, indicating that on Thursday 26 November he had met with the Minister and that he and the Minister had reached an understanding on a number of matters. Those understandings included a compromise on this question of minimum rates; the compromise was that the minimum rate would be phased out over four years. The day after I spoke on this Bill I received another letter from the President of the Local Government Association, which indicated that no such understanding had been reached at the earlier meeting and that as far as the President was concerned there was no such agreement in respect of the matter of the minimum rate, or indeed a number of other matters, which I identified last December and which I will not repeat on this occasion. It is therefore most heartening to have received a firm and fixed view of the President and on behalf of the Executive of the Local Government Association.

The Hon. C.J. Sumner interjecting:

The Hon. DIANA LAIDLAW: I have just noted that at times it was a bit like dealing with quicksand, but we have now reached a firm understanding that the position with respect to minimum rates is non-negotiable as far as the Local Government Association is concerned, and certainly that is the firm and adamant view of councils across this State, and it is the view which the Liberal Party will be presenting and insisting upon during the Committee stage. Just before—

The Hon. C.J. Sumner: Can't you make up your own minds?

The Hon. DIANA LAIDLAW: We made up our minds. If the Attorney-General had been in the Chamber all the time I was speaking, he would not be interjecting now, because he would have—

The Hon. C.J. Sumner interjecting:

The Hon. DIANA LAIDLAW: You are being testy today; perhaps it is the by-election. I would have thought that after the break we would all come back a little bit relaxed. However, I inform the Attorney-General that the Liberal Party presented its view on this matter at a time when the Local Government Association was seeking a range of compromises with the Minister. However, ultimately no compromise was reached. Therefore, the Liberal Party has remained firm in its view throughout this whole matter, and it is interesting now that the Liberal Party should receive such solid endorsements from councils and the Local Government Association in respect of the stand that it has taken throughout the course of discussion on this Bill.

Finally, these matters will be pursued during what I envisage will be a long Committee stage. I assume that the debate will be extended, because half an hour ago I received nine pages of further amendments from the Minister. Between Bills on child abuse and other matters, I will certainly seek to have discussion on these amendments as soon as possible.

It is my hope that the Government will see the wisdom of the position that the Liberal Party, I trust the Democrats, councils across the State and the Local Government Association itself have in respect of minimum rates and other important matters that I have outlined earlier and repeated today. It is also my hope that the Bill is passed in this Council in a form that is in the best interests of local government not only now but also well into the future. That certainly should be our objective in discussions on this Bill. I support the second reading.

The Hon. J.C. IRWIN secured the adjournment of the debate.

ACTS INTERPRETATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 3 December. Page 2469.)

The Hon. K.T. GRIFFIN: The Opposition supports the second reading of this Bill, which seeks to do three things. Firstly, it includes in section 4 of the principal Act a new definition of 'statutory instrument' which will encompass the codes of practice which legislation such as the Occupational Health Safety and Welfare Act and the Lifts and Cranes Act Amendment Act has required to be subject to disallowance by the Parliament.

Secondly, this Bill also repeals section 14c of the principal Act and replaces it with a new section 14c to deal with the exercise of powers where an Act has been passed but comes into operation at a later stage as a whole or in stages. Thirdly, it provides for a new section 19, which clarifies the status of various parts of an Act such as schedules, headings, marginal notes, footnotes and punctuation.

With respect to the first amendment, there is no difficulty. It is important that where codes of practice are subject to disallowance they are encompassed within the definition of 'statutory instrument', because they really are no different from regulations and by-laws. Therefore, it is appropriate that they be included in the definition of 'statutory instrument'. Also, there is no difficulty with new section 14c. Section 14c of the principal Act already provides that, where an Act of Parliament is passed but is not yet in operation, and it is expedient that a power expressed to be conferred by an Act be exercised before it comes into operation, it can be so exercised before it comes into operation.

However, there is a proviso that anything created, granted, issued, done or made under or pursuant to an Act will take

effect when the Act comes into operation and not before. The difficulty has been that in some legislation there is a provision for certain parts of it to come into operation progressively, and that existing provision of the Acts Interpretation Act probably has not applied where the Act comes into operation in that way. The amendment accommodates that and deals now with provisions rather than the Act as a whole coming into effect. As it does not significantly alter the principle, I am prepared to indicate our support for the amendment.

The third amendment seeks to provide that a schedule to an Act forms part of an Act, that a heading to a Part, division or subdivision of an Act forms part of an Act, that a heading to a section does not form part of an Act, and that a marginal note or footnote does not form part of an Act.

I can agree with all those provisions. I have always regarded a schedule as being part of an Act. However, I am alert to the fact that there has been some debate over the years as to whether or not a schedule is part of an Act. This puts that beyond doubt. A heading to a Part, division or subdivision of an Act is enacted by the Parliament. We consider the headings, and therefore it can be said to be a decision of the Parliament that a heading should be in a particular form and in a particular place in an Act of Parliament. There is no difficulty with that.

It has never been the position that a marginal note, footnote or a heading to a section forms part of an Act, and it would be quite improper for such a heading, marginal note or footnote to be so included. Marginal notes and headings are generally inserted by Parliamentary Counsel, and footnotes are generally added by the Government Printer. They are not matters on which the Parliament has exercised its mind and made a decision.

However, there is a problem with new section 19, because subsection (5) provides that notwithstanding the fact that a heading to a section, a marginal note or a footnote does not form part of an Act, for the purpose of resolving questions affecting the construction of an Act the headings to the sections may be taken into consideration: the marginal and other notes to the text of the Act as printed by the Government Printer may be taken into account; and punctuation appearing in the text of the Act as printed by the Government Printer may be taken into account.

We have had a debate about what may be taken into consideration as an aid to interpretation in other Bills that have been introduced in the last two sessions, and I think that, satisfactorily, they have been shelved. However, I have a concern about headings and marginal and other notes being an aid to construction. They are not matters on which either House of Parliament has exercised its mind. Traditionally, marginal notes have never been the subject of amendment in either House; the headings to particular sections have never been subject to amendment; and the footnotes never come before the Parliament—they are added by the Government Printer.

It would be quite wrong, in principle, for those headings to sections, marginal and other notes, including those footnotes, to be regarded as an aid to interpretation. I give one immediate example of the problem. If one looks at the Criminal Law (Sentencing) Bill on which I spoke at great length earlier this afternoon one will find beside clause 33 that the marginal note states:

Court to furnish Minister with copy of court order.

The section itself does not anywhere refer to the Minister—it refers instead to the Director. We have not yet addressed our mind to that marginal note; it can be corrected by Parliamentary Counsel, and we would not have addressed our mind to that. However, if that had slipped through and was in the print published by the Government Printer, and if it was to be an aid to interpretation, there would be a conflict between the marginal note and the clause.

I think that it is wrong, as I have said, for such marginal notes to be regarded as aids to interpretation because they are not considered by the Parliament, and I will be moving an amendment to delete references to headings and marginal and other notes being aids to construction.

Punctuations appearing in the text of the Act as printed by the Government Printer are another issue because, in some instances, the punctuation is considered in the Bills and amendments that are passed by the Parliament, and occasional corrections are made by the table when a problem with the punctuation is drawn to the attention of the House.

On the other hand, it would appear that, in some instances, Parliamentary Counsel may alter the punctuation without reference to the House. I would like some clarification of the extent to which punctuation is amended, otherwise than under the supervision of the Parliament and the respective Houses of the Parliament, to determine the extent to which I can support the punctuation being an aid to construction.

Obviously, the location of a comma can alter quite dramatically the interpretation of a particular provision in legislation. If it is there when the Bill passes the Parliament, well and good; no-one can argue with that. It may be that that punctuation should in fact be part of the Act rather than merely an aid to interpretation. However, I am not pushing it that far.

On the other hand, if punctuation is altered, inserted or removed by Parliamentary Counsel or by the Government Printer without the supervision of the House, then obviously we ought not to allow that to be an aid to interpretation. I would like some clarification of the position with regard to punctuation, because I remain in two minds as to the way in which we ought to handle that in the interpretation of Acts of Parliament.

I now turn to the question of retrospectivity. Quite properly, the second reading explanation has drawn attention to the fact that in clause 5 of the Bill the amendments are to operate retrospectively and prospectively. I cannot see any need for the amendments in clause 2 to operate retrospectively. Obviously, when this Bill is passed (hopefully in its amended form) the statutory instrument definition will be changed, and thereafter any code of practice which is required to be brought to the Parliament will be covered. I do not know of any which are presently required to be brought, which have been brought and which have been subject to review by the Joint Standing Committee on Subordinate Legislation.

I am not aware of any need to make clause 3 operate retrospectively. With respect to clause 4, I suppose an argument for retrospectivity is that any Act to which it applies, whenever passed, ought to be treated in the same way as any Act which is passed and which operates in the future. Therefore, there may be some need for that clause to be given retrospective operation. Before the Council makes a decision on that question, it is a matter that ought to be addressed by the Attorney, with some advice in more specific detail as to why retrospectivity is required in respect of each of the clauses of this Bill. Subject to those matters the Opposition is prepared to support the second reading.

The Hon. I. GILFILLAN: I listened to the comments made by the Hon. Mr Griffin about clause 4 (5). Headings to clauses and marginal and other notes in the text of the legislation as printed by the Government Printer do appear

to be inappropriate and could be confusing and unnecessary in resolving questions affecting the construction of an Act. However, I hold strongly that the punctuation should be part of the construction of the Act and I do not see how an Act can be interpreted without taking full account of how it is punctuated. It may mean—

The Hon. K.T. Griffin: I am asking for some clarification as to who puts the punctuation in and when it is put in.

The Hon. I. GILFILLAN: It would seem to me that the punctuation is so essential to the intepretation of the Act that the punctuation in the draft passed by this Parliament must remain intact and there should be no variation. On further discussion, that may prove to be awkward and I am prepared to listen to discussion on that. Anyone who has read improperly or wrongly punctated material will know how confusing it can be in seeking a specific interpretation—

The Hon. J.C. Burdett: Even misleading.

The Hon. I. GILFILLAN: Yes. The last point is the question of retrospectivity and I believe that subclause (4) and the relevance of those matters should indeed be retrospective and prospective, but I am not convinced that that should apply to the other clauses. I would be interested to hear argument from the Attorney about that, and I would need to be persuaded that the other clauses need to be specifically retrospective and prospective. I indicate our support for the second reading.

Bill read a second time.

BEVERAGE CONTAINER ACT AMENDMENT BILL

Received from the House of Assembly and read a first time.

ADJOURNMENT

At 5.45 p.m. the Council adjourned until Wednesday 10 February at 2.15 p.m.