LEGISLATIVE COUNCIL

Wednesday 24 February 1988

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

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

QUESTIONS

RU RUA NURSING HOME

The Hon. M.B. CAMERON: I seek leave to make a brief explanation before asking the Minister of Health a question about the Ru Rua Nursing Home at Tennyson.

Leave granted.

The Hon. M.B. CAMERON: Members would be aware of the article which appeared in today's *Advertiser* about 'massive gaps' in the provision of services to the intellectually disabled in South Australia. The article is based on the contents of a report handed to the Minister in late December by Mr Michael Steer, the Director of Disability Services, the Victorian Department of Community Services. I seek leave to table a copy of that report.

Leave granted.

The Hon. M.B. CAMERON: Dr Steer's lengthy report notes that the facilities at Ru Rua are appalling, and recommends that the institution be completely dissolved by June 1989. Staff have described the facility as overcrowded, outdated and hopeless. Family and parent representatives are even blunter in their description: they say that Ru Rua's facilities are deplorable. All of this is well known to the Minister. The present Government indicated in its election speech back in 1982 that Ru Rua's intake of patients would cease, and in 1985 the Labor Government's health policy said, in part, that Labor would:

> Progressively relocate residents from Ru Rua Nursing Home into more appropriate community housing.

Promises there might have been, but almost six years later staff and residents of Ru Rua have still seen little action. The Minister is quoted in today's *Advertiser* as saying that the process of moving residents out of Ru Rua has begun. Last August he made much of the $160 000 which had specifically been allocated by the Health Commission so that the process of devolution could begin. The Minister told this Council that the aim was to get all residents out of the institution by 1990. It appears that he had better get a move on, because the sum total of this process of devolution is that four residents have been moved from Ru Rua into community housing. Another 86 residents are still living in (to quote the report) overcrowded, outdated, hopeless and appalling conditions in a building that is virtually falling apart around them.

I am told that three houses in the northern region of the Intellectually Disabled Services Council have been obtained for extending this program of devolution, but the IDSC cannot do anything about getting residents out of Ru Rua because it has no funds to recruit or pay staff for the houses. I am told that virtually all of the $160 000 has run out and that, even if funding was made available today, it could be at least May before up to 12 more residents could be moved from Ru Rua, such is the time frame of advertising positions, interviewing staff and making appointments. Yet the Health Commission said that 20 patients would be out by Christmas.

All of this is tragic when it is known that people to be transferred to these three community houses have already been identified, and the Education Department is already doing its bit by providing transport for Ru Rua residents to travel from Tennyson to Elizabeth for classes at the local special school in preparation for their moving into community homes. From the community's viewpoint, the most disturbing fact, I have been told, about the whole issue is that almost six years after moves to phase out Ru Rua were announced just four residents have been relocated into appropriate accommodation. My questions are:

1. Will the Minister immediately allocate sufficient funds to the IDSC so that the council can obtain staff for the three additional community houses already mentioned?

2. Will the Minister, as a matter of urgency, indicate what amounts he plans to allocate from now until the end of 1989 for the purchase of community housing for residents now at Ru Rua, and the amounts that will be available for staffing that housing?

3. Why has the Minister neglected to provide sufficient resources since 1983 to prevent the dreadful situation we are now in where (to quote the Steer report) there are massive gaps in services to the intellectually disabled?

The Hon. J.R. CORNWALL: The devolution at Ru Rua commenced in December 1987. We were able to launch that very happy occasion on a Sunday at Surf Street, Brighton, where the first of the homes is located. The four residents are now well settled there and we have learnt a great deal from that experience. It is perfectly true that three homes in the northern suburbs are at this moment ready to receive more residents. All residents at Ru Rua, which is located at Estcourt House at Tennyson, will be relocated by 30 June 1989, and Ru Rua will be closed.

The Steer report in respect of Ru Rua has been completely overtaken by events. This morning I confirmed again with the Chairman of the Health Commission that all the residents of Ru Rua will be relocated by 30 June 1989. The Ru Rua situation has been overwhelmed by events. Funds have been allocated, and on the weekend I made a significant announcement as to what amounts will be allocated to the end of 1989 to purchase ordinary houses in suburban Adelaide for these residents. I talked about property rationalisation and indicated that a significant amount of the funds raised from the sale of a number of surplus properties—potentially a $15 million sale—would be made available to purchase ordinary houses in ordinary streets in suburban Adelaide so that the residents of Ru Rua could be relocated.

The first cab off the rank to criticise it, the old Pavlovian reflex, was the Hon. Martin Cameron. You ring the bell, and he comes out punching saying, 'It is outrageous! It is disgraceful.' He says that all the time. It is always—

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: We are not closing down any psychiatric services at all, and the Hon. Mr Cameron knows it.

Members interjecting:

The PRESIDENT: Order!

The Hon. J.R. CORNWALL: Opposition members are always on about arrogance on the other side; they are very good at it. However, the difference is that they combine their arrogance with an almost total ignorance, and it comes out smelling badly. When I announced the property rationalisation as part of the Ru Rua devolution, which, I repeat, will be completed by 30 June 1989, Martin Cameron as usual was first cab off the rank with destructive criticism. In the almost 2½ years that he has been Opposition spokesman on health he has never been known to make one constructive comment; and we are still waiting.

The Hon. M.B. Cameron interjecting:

The Hon. J.R. CORNWALL: No, you do not understand. Mr Hill understands because he is a hot shot in real estate and knows what we are about. In fact, I will make the offer here and now. The Hon. Mr Hill has had a number of distinguished careers: he fought for king and country in Her Majesty's Australian Navy during World War II; he had a distinguished career in real estate and, of course, he is the grandfather of this Chamber, shortly to retire from this place. If he would care to talk to me I would be very interested to have him as a part-time consultant on this property rationalisation issue because he knows the property market very well.

The Hon. L.H. Davis interjecting:

The Hon. J.R. CORNWALL: No, he would still be able to advise. There is Mr Davis, who wants to go to another place; Mr Lucas, who won't go to another place; and the rest of them who have never been anywhere.

Members interjecting:

The Hon. J.R. CORNWALL: I must say that if you can have fun in this place you have a dead set peculiar sense of humour. I have answered the question. Suffice to say that, as Mr Hill knows, if one has a non-income producing asset the smart thing to do is to realise it and re-invest it in something that one can use. That is precisely what the Health Commission is doing, particularly with accommodation for the intellectually disabled services. If I were the sort of person who was interested in the bear pit politics that Mr Cameron plays—fortunately I am not—I would say, 'Nice try, Martin, but you missed again'.

VERDUN TOURIST DEVELOPMENT

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Tourism a question about the tourist development at Verdun.

Leave granted.

The Hon. L.H. DAVIS: My question relates to a tourist development at Verdun in the Adelaide hills—a Dutch village comprising a full size windmill, motel units, a shop, and parking. This project has received the approval of the Planning Commission and the Planning Appeal Tribunal, and those decisions are not questioned by me.

However, what needs to be clarified is the role in this matter played by Tourism South Australia as it appears to have made certain assumptions that this project would receive the approval of the Planning Commission. This is revealed in sworn evidence given to the Planning Appeal Tribunal by Mrs Caroline De Koning, one of the proponents of the development. In the transcript of evidence at page 44 Mrs De Koning revealed she had been liaising with the Minister's department for a long time.

At page 45 she revealed the department had already made arrangements for potential investors in the project to come to Adelaide from Malaysia. She was then asked what would happen if the decision of the Planning Appeal Tribunal delayed the project. She replied, 'It would very much embarrass us and I think it would also embarrass the South Australian Government for that matter.'

My questions to the Minister are:

1. Did she, or anyone from Tourism South Australia, make any representations to the Planning Commission or the Minister for Environment and Planning in relation to this development and, if so, what were those representations?

2. Is it the normal practice of her department to seek investors in projects before they have received all necessary planning approvals?

3. In this particular case, did the department offer to finance the visit to Adelaide by potential Malaysian investors, as Mrs De Koning implied in her evidence?

The Hon. BARBARA WIESE: The Dutch village development at Verdun has been under consideration and through various ups and downs for a number of years. This matter was brought to my attention during the early days of my time as Minister of Tourism, and officers of the then Department of Tourism had been talking with the owners of this development for some time. As I recall, the proponents had approached the department in the first place for development-oriented advice and also for advice as to how they might go about achieving their development objectives.

It has been some time now since I have received a briefing on this matter, and I will have to obtain a further briefing in order to answer the honourable member's question in detail. However, I can say that I have not made any representations to the Planning Commission on the matter. I am not sure whether or not officers of Tourism South Australia have done that, but it is a fairly common thing for officers of that agency to appear before the Planning Commission or, indeed, to provide evidence before individual councils that are considering planning applications for tourism developments. That may have happened in this case, and I will certainly check on the matter.

As to whether officers have been seeking investors for the project, I do not know, and I will have to check on that as well. However, that, too, is something that officers of the agency do from time to time when individual operators are looking for investors for their developments. If there is any way that we can link a potential investor with a proponent of a developer, we are very happy to assist in that process. As to the detail of the issues that have been raised, I will have to get a report, which I will bring back as soon as I am able to.

DRUG DEFENDANT DEPORTATION

The Hon. K.T. GRIFFIN: I seek leave to make a brief explanation before asking the Attorney-General a question on the matter of the possible deportation of a drug defendant.

Leave granted.

The Hon. K.T. GRIFFIN: I was horrified to read in the *Advertiser* this morning that Rocco Sergi, an illegal immigrant and defendant in a criminal conspiracy case, will be released on bail and may then be deported to Italy before he stands trial. Sergi is charged with four other men (one a senior South Australian police officer) on conspiracy charges, which are reported to result from National Crime Authority investigations. I am concerned that the Commonwealth may deport Sergi as an illegal immigrant, and then there is the major expense and considerable hassle in getting him extradited from Italy to face the charges in the Supreme Court, to where he has been committed for trial—if, of course, he can be found once he has been deported.

I am also concerned about the effect that Sergi's deportation may have on the trial. The question may be asked of the effect that this has on the administration of justice and the perception of the community of the way that this matter may be handled. I recognise that prosecutions of this nature are largely the responsibility of the Commonwealth: however, my questions to the Attorney are:

1. Does the Attorney-General regard it as unsatisfactory to deport Sergi before the trial is commenced?

2. As the chief law officer for South Australia and a member of the Ministerial Council responsible for the

National Crime Authority, will the Attorney-General make representations to the Commonwealth to ensure that Sergi does stand trial in Australia and is not deported, at least until that trial, and appeals, if any, may be concluded?

The Hon. C.J. SUMNER: I understand the issue that the honourable member has raised. On the face of it, it would seem somewhat surprising that consideration could be given to deportation prior to the matter being tried in the Australian courts. However, I am not aware of the full details of the matter. Of course, the question of bail is for the courts to decide. I would need to seek the views of prosecuting counsel on the other issues which have been raised by the honourable member and which have been canvassed in the media. Having done that, I will bring back a reply for the honourable member.

CAMPANIA

The Hon. C.M. HILL: I seek leave to make a short statement before asking the Minister of Ethnic Affairs a question about the proposed sister city or region relationship between this State and the Italian region of Campania.

Leave granted.

The Hon. C.M. HILL: About 12 months ago, the Minister of Ethnic Affairs announced that he was in the process of establishing a sister city or region relationship between the South Australian community and the Italian region of Campania. As I understand it, the Minister went to Italy, discussing the issue at Benevento and other cities in the Campania region. I understand that one or two Italian residents of this city went there and discussed it, and there has been some discussion whether or not they went at Government expense, but that is not the point I am making.

What I am worried about now is that my Italian friends in this city have been pressing me to know what has gone wrong with the whole plan and why more progress has not been made and announcements given about it. The Minister has announced it from time to time at meetings and gatherings of the Italian community when the people concerned came from Campania. I did not hear him mention it when he was at meetings of northern Italians or people from the Fruili region and areas of that kind. My paramount reason for the question is that Italian people are pressing me to know what is happening about the matter.

From time to time, they see the Adelaide City Council publicising sister city relationships with cities in Japan, the United States, and New Zealand and the region of Penang. However, at no stage has the Lord Mayor mentioned the question of a sister city relationship with any part of Italy. I want a reply for my friends so that it can be made perfectly clear, hopefully, that the Minister is still as keen as he was on this plan, and that progress towards formal establishment and official recognition of this arrangement is established here in Government circles as well as in the Minister's office. Can the Minister say what is the present situation regarding the plan for a sister city relationship?

The Hon. C.J. SUMNER: It is not planned: it is an actuality that I have announced several times at various functions. The reality is that in May last year I visited Italy for several purposes, one of which, I might add, as an aside, was to have discussions with the Italian Government in Rome about a teacher exchange agreement with Italy. I had discussions with a Professor Avveduto, who is the Director-General of the Department of Cultural Affairs in the Department of Public Education in Italy. I am pleased to say that, following those discussions, which were of course conducted in the Italian language—

An honourable member: Without an interpreter.

The Hon. C.J. SUMNER: —without an interpreter. As a result of those discussions, a teacher exchange agreement between South Australia and Italy is now in place. I understand that it was the envy of the other States that we were able to achieve this as a first for South Australia. Two teachers arrived from Italy in January and they are now teaching in South Australian schools.

The Hon. C.M. Hill: My question was not about teachers.

The Hon. C.J. SUMNER: I am just filling you in so that there is no misrepresentation or in case you thought that I was over there on a junket or something of that kind. I am trying to indicate that I was there for a very short time, that I was working hard and that these efforts have produced results. It was not the first opportunity that I have had to discuss a teacher exchange agreement with the Italian Government but I was able to conclude those negotiations in Rome and to get the teacher exchange agreement under way.

There are two teachers from South Australia now teaching in Italy and, frankly, with all due modesty, I am proud of that achievement in that respect, because it is of benefit to the Italians who come here and teach, so they have the capacity to be in an English speaking country and improve their fluency in English and, at the same time, it is an advantage for students in our schools who get taught the Italian language by—

The Hon. C.M. Hill: How many Italian teachers are here?

The Hon. C.J. SUMNER: As I said, there are two here teaching in schools, and two of our teachers have gone to Italy. It is all in place.

The Hon. C.M. Hill interjecting:

The Hon. C.J. SUMNER: The honourable member says that it is very good.

The Hon. C.M. Hill: Answer the question.

The Hon. C.J. SUMNER: Just a minute; I want to give a full report as you have raised the matter. This is, of course, an advantage to the Australian children who learn and, indeed, an advantage to the teachers of Italian in South Australia because they have the opportunity to converse and have seminars and workshops with people who are teaching—

The Hon. C.M. Hill: To learn the methodology.

The Hon. C.J. SUMNER: Yes, to learn the methodology—who are actually teachers from Italy. Of course, that follows teacher exchange agreements that I was also able to negotiate with the Greek Government, which followed teacher exchange agreements that have already been in place for some time with Canada, Germany and France.

The Hon. C.M. Hill: What about Yugoslavia?

The Hon. C.J. SUMNER: No, there is not an arrangement at this stage with Yugoslavia. So, that was one of the tasks which was completed successfully. The second task involved my travelling to Naples, not to Benevento, although I had been there on a previous occasion following the disastrous earthquake in the Campania region some time ago. I spent two weeks in the area travelling and meeting the families of people who had suffered as a result of damage from the earthquake.

However, on this occasion I went to Naples where I followed up an initial contact that I had made in 1985 with the regional giunta. On this occasion I had the pleasure of meeting Mr Rizzo, who is, in effect, the regional Government Minister for immigration matters (called an assessore). I also met a Mr Fantini, who is the President of the regional giunta, in other words, the equivalent of the Premier of South Australia.

We discussed the question of the gemellaggio, that is, the twinning of South Australia and Campania. We agreed, in principle, that this should proceed. Following my return to Australia, we received a formal letter of agreement from the Campania region. That followed correspondence from us to them and we received a reply which accepted the proposal for the gemellaggio. Therefore, it is in place.

We have not had a formal signing ceremony, because that opportunity has not yet arisen. Following the May visit last year to Italy, I have not had the opportunity to expend my parliamentary travel allowance on again travelling to Italy to formalise the arrangement. I think that it would be important if the Premier were involved also. We have not actually signed the formal documents, but I hope that that occurs at some stage, and in fact it was thought last year that representatives from the Campania region would come to Australia for a conference which was held in Melbourne and hosted by the Hon. Mr Spyker, the Minister of Ethnic Affairs in Victoria. At that conference representatives from a number of the regions of Italy and Australian States discussed the coordination of cultural and education exchange programs, but unfortunately the Campania region was not represented. Had representatives attended, they almost certainly would have come to South Australia also and perhaps we could have then formalised the agreement. However, the letters have been exchanged.

The honourable member should not be surprised that he has not heard anything from the Lord Mayor about the matter, because the City of Adelaide does not have anything to do with it. It is not a sister city arrangement: it is a twinning of the Campania region and—

The Hon. C.M. Hill: So is Penang, but the city is involved.

The Hon. C.J. SUMNER: That is a twinning that was done with Penang.

The Hon. C.M. Hill: It is not Georgetown: it is Penang.

The Hon. C.J. SUMNER: Whether it is Georgetown or Penang, that is not relevant to this discussion.

The Hon. C.M. Hill: Are you trying to keep the Lord Mayor out?

The Hon. C.J. SUMNER: No, the Lord Mayor can be involved. It is not a matter between two cities. It may be appropriate for the City of Adelaide to have a twinning relationship with Benevento, Avellino or Naples—

The Hon. C.M. Hill: Or Molinara or St Giogio—

The Hon. C.J. SUMNER: Yes, Molinara, Caserta, or Salerno.

The Hon. C.M. Hill: My friend wants to know what is the current position—

The PRESIDENT: Order!

The Hon. C.J. SUMNER: I am getting to that.

The Hon. C.M. Hill: You are taking a long time.

The Hon. C.J. SUMNER: I didn't know that you had any friends.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: The honourable member asked me a question and I am giving a full reply.

The Hon. L.H. Davis: You are going around Italy before you give the answer.

The Hon. C.J. SUMNER: That's all right. I want to give the full picture.

The Hon. C.M. Hill interjecting:

The Hon. C.J. SUMNER: No, it is a significant achievement of which I am very proud. It should be on the record.

Members interjecting:

The Hon. C.J. SUMNER: In any event, I am trying to tell you that there is a difference between a city and city twinning, or a sister city arrangement, and a region and State twinning. Here we have an arrangement between South Australia as a State and Campania as a region. So far as I am concerned, as a result of the exchange of letters that has occurred, the gemellaggio is in place and I have announced it. It is not a plan: it is in place.

The Hon. C.M. Hill: No-one knows about it.

The Hon. C.J. SUMNER: I have announced it. The honourable member says that he has heard about it after attending a number of functions. He said that in the question that he asked.

The Hon. C.M. Hill: They were Italian functions.

The PRESIDENT: Order! You have asked the question, Mr Hill.

The Hon. C.J. SUMNER: The honourable member should read the *Advertiser,* because it actually appeared in that newspaper. I do not suggest that the honourable member is not being diligent as a member of Parliament in his attention to the daily press, but I can assure him that the announcement of the gemellaggio appeared in the daily press. It also appeared in the Italian press and it was broadcast on ethnic radio. So the normal media channels of publicity have been used to advertise the fact that this gemellaggio or this twinning between South Australia and Campania is in place.

As far as I am aware, no Government funds were expended in sending any members of the community to the Campania region. No-one accompanied me: I went on my own. I did not even take the usual trappings that the Hon. Murray Hill used to take when he was a Minister. He used to cart himself around the world with an entourage, a retinue, of people. That is what happened.

The Hon. C.M. Hill: It was the most economical trip made by any Minister.

The Hon. C.J. SUMNER: It was not. I have brought the figures before the Council.

The Hon. C.M. Hill: It cost less than yours.

The Hon. C.J. SUMNER: It did not. I have brought the figures in here and they are on the record. Researchers can find out when they go through *Hansard* after you have retired.

The Hon. C.M. Hill: You took your assistant, Mike Duigan, with you. Why? To give him a free trip—

The PRESIDENT: Order!

The Hon. C.M. Hill: And to give him experience—

The PRESIDENT: Order!

The Hon. C.M. Hill interjecting:

The PRESIDENT: Order! The Hon. Mr Hill will come to order.

The Hon. C.J. SUMNER: I took one person with me on the earlier trip to which the honourable member is referring, but on this occasion I went on my own. I did the whole of the work on behalf of the Government. I negotiated with the Italian Government on the issue of teacher exchange; I negotiated with the Government of the Campania region on the matter of twinning; I attended a conference of criminal law experts and criminologists in Syracuse on the death penalty; and I attended a conference in Yugoslavia on victims of crime. I did it all on my own. I did not have any assistance or a retinue.

The Hon. J.R. Cornwall: He came back tired out, he did.

The Hon. C.J. SUMNER: I came back exhausted; that's right.

Members interjecting:

The Hon. C.J. SUMNER: Yes, that's right.

The Hon. C.M. Hill: With free accommodation in Sicily.

The Hon. C.J. SUMNER: It is declared. It is in my report, which obviously you have read.

The Hon. C.M. Hill interjecting:

The Hon. C.J. SUMNER: Very good.

The Hon. C.M. Hill: What about this deal: is this relationship going on?

The Hon. C.J. SUMNER: Yes.

The Hon. C.M. Hill: Are we making any real progress?

The Hon. C.J. SUMNER: Yes, we are indeed.

The Hon. C.M. Hill: What about the Mayor of Benevento: are we going to bring him out to meet his South Australian friends?

The PRESIDENT: Order! I call the Council to order. The Hon. Mr Hill has asked his question at great length.

The Hon. L.H. Davis: But he is not getting an answer.

The PRESIDENT: The Minister is replying at great length and I would ask all interjections to cease.

Members interjecting:

The PRESIDENT: And that includes you, Mr Davis.

The Hon. C.J. SUMNER: There is in place a committee which involves people from government and from the Campania community. The initiative arose essentially out of the community or out of the Federation of Campania Associations in South Australia of which Mr Di Fede, whom the honourable member would know, is the Chairman. That committee is to liaise with Government on the issue. I do not anticipate that there will be a weekly series of exchanges, exhibitions or what have you. This has developed and it will grow over a period of time, depending on the interest in it from the Campania region, the Government and the people, as it will grow from the South Australian point of view.

Part of what has to happen will come from the community. The committee that I have mentioned may decide that it would be appropriate to send a group of young people to the Campania region. If that is agreed, then we have an avenue to approach officially the Campania Government and to say, 'We have this group that wants to come. Are you able to provide billets for people in various parts of the region? What sort of a program would you be able to provide?' It is a matter of building up the relationship on that basis.

It also enables the Campania region to have an entry into Australia so that we do not just see it as being something that is exclusive to South Australia but, rather, it enables people from the Campania region to use South Australia as a base for their activities in exchange in trade, together with economic and cultural exchanges throughout Australia. Discussions on those matters are proceeding.

As part of the bicentenary, I expect that some cultural events, or possibly some artistic events, will be sent from the Campania region to South Australia. The honourable member would also be glad to know that I have received a letter from Mr Rizzo, to whom I referred earlier, about the participation of the Campania region in the Adelaide Expo which is to be held in May 1988.

They have undertaken to put together an exposition for the Adelaide Expo, so that is a concrete result. Products to be exhibited will be all of the region's craft and trade production with examples of various sections of that production such as ceramics and wrought iron. Presumably more details will arrive about that but at this stage we have a letter saying that they intend to exhibit in the expo.

The Hon. C.M. Hill interjecting:

The Hon. C.J. SUMNER: We have not gone to sleep. The honourable member is in a state of appalling ignorance about the situation despite the fact that it appeared in the daily press and he has been to a number of functions where I spoke about it. I am surprised that he is not a bit more *au fait* with it. Nevertheless, it is in place and it will grow, depending on the interests and enthusiasm for it in both communities, not just the Governments but the people themselves. It creates an avenue to increase contact and exchange on a number of matters.

The Hon. C.M. Hill: You are making slow progress.

The Hon. C.J. SUMNER: We are not making slow progress. We are not going into the Penang week syndrome of the 1970s, with jumbo jets taking off once a year—

The Hon. C.M. Hill: Your Tourism Minister will not like that.

The Hon. C.J. SUMNER: That's all right. There is a limited Penang—

Members interjecting:

The PRESIDENT: Order!

The Hon. C.J. SUMNER: There is a limited Penang week exchange, which is useful. That is all right. What I am talking about is not the great big many-dollar bonanza that was trumpeted in the 1970s. It is not like that and I am sure that if it were the Hon. Mr Hill would be critical. It is in place and it will grow, depending on the support and enthusiasm of the people. It is an important initiative and, during a visit to Italy, I was pleased to have been able to secure the twinning. It is a good thing for South Australia and for the local Campania community.

RENT RELIEF

The Hon. I. GILFILLAN: I seek leave to make a brief explanation before asking the Minister of Community Welfare a question relating to the rent relief scheme.

Leave granted.

The Hon. I. GILFILLAN: Members will recall that on 10 November last year I asked the Minister a question relating to the rent relief scheme. That is 3½ months ago. It related to a report entitled 'Beyond Tent City'. That report states that, because of the way in which rent relief is calculated, people earning the least receive the least, and it gave an example of a 17-year old on $50 a week who receives $10.25 in rent relief compared with a 24-year old, earning $104.75 a week, who receives $20.50 in rent assistance. I asked the Minister:

> ... does he believe that the result as spelt out in this article is accurate? Does he believe that it was the intention of the rent relief scheme to work in this way? If not, will he ensure immediate adjustment of the scheme to ensure that relief is given according to need, particularly for those 16-year olds and 17-year olds on $50 or so a week ...

The Minister answered:

> The Hon. Mr Gilfillan is quite correct in saying that I am concerned about these matters—wearing my various hats as Minister of Health, Minister of Community Welfare, Chairman of the Human Services Subcommittee of Cabinet and as Minister directly responsible for the social justice strategy, among other duties.

He eventually got to answer the question and said:

> In response to the honourable member, I indicate that, yes, I am concerned and, no, I have not yet had a chance to read the report. It was available only yesterday, as I understand it, and my colleague, Terry Hemmings, has the primary carriage of it, as he should have, especially in this International Year of Shelter for the Homeless. But, I am very concerned indeed and I will be doing what I can, wearing the various hats to which I have referred.

I remind members that last year was the International Year of Shelter for the Homeless, but the Minister's answer required a supplementary question, as follows:

> By way of a supplementary question: will the senior and informed Minister—

meaning the Hon. John Cornwall—

> answer the question whether he believes that the example given in the paper about the lower relief being given to those in the lower income group is in fact correct? Does the Minister know

that? If that is the case, will he give an undertaking to have that situation reversed?

The Minister's answer was:

I do not have the primary carriage of this matter. As I have said, it belongs, quite correctly with my friend and colleague the Minister of Housing and Construction. However, yes, I do believe that it is correct and, in relation to any initiative which my colleague and I might be able to undertake within the parameters of the State budget that would correct that apparent anomaly, not only will I support it vigorously but also I will solicit and urge support for it from all my colleagues. In many of these matters, despite what the young Mr Lucas might say, I have winning ways.

The Hon. R.I. Lucas: How did I get into it?

The Hon. I. GILFILLAN: You had been interjecting in your normal manner and it goaded the Minister. From inquiries this morning, it is my unfortunate task to inform the Council that the Housing Trust, which runs the rent relief scheme, confirmed that there has been no change. This cruel anomaly still exists; those who need the relief most get the least. My questions are:

1. Has the Minister now read the report 'Beyond Tent City'?

2. Has he made any effort to have the anomaly removed?

3. Given his amazing and self-confessed powers and winning ways, why has the situation not changed? Has he not been able to have his way with his colleague the Minister of Housing and Construction?

4. What other causes, except the callous indifference of the Bannon Government, have blocked the clearly identified injustice of the rent relief scheme as it applies to the young homeless in this State?

The Hon. J.R. CORNWALL: I am not prepared to publicly canvass with whom I may or may not have had my way. Those matters should strictly remain private. However, with regard to rent, public and private housing, anomalies and so forth, this is a complex and difficult area. It is typical of a Democrat to come in here and over-simplify it, stand up and pontificate. As recently as yesterday, I had discussions with my colleague the Minister of Housing and Construction (Terry Hemmings).

The Hon. I. Gilfillan: Prompted by my questions?

The Hon. J.R. CORNWALL: No, they were prompted by a concern that was expressed by a number of our colleagues who deal with people on a daily basis in the electorates, those who are sensitively in touch with their electorates. Whether or not there are anomalies in a number of areas is a matter for debate. The family assistance scheme, various support programs and matters that were put in place in the last Federal budget as part of the Federal Government's meeting its undertakings to substantially abolish child poverty by 1990 have had some impact on rent relief schemes in both the public and private sectors. They have certainly created some dilemmas because, if the amount is taken into account in assessing rent relief, some people claim, in a sense, it is a jeopardy or an effect which was never planned by the Federal Government. It is interesting that the Victorian Government recently moved to ensure that that additional amount for children up to the age of, from memory, 12 or 13 years and between 13 and 16 years was not taken into account when assessing rent and rent relief.

We find ourselves very much on the horns of a dilemma in this area. As the Hon. Mr Gilfillan and everyone in this place would know, the Housing Trust last year, because of the reduction in funding by the Federal Government, had a deficit, from memory, of more than $60 million. As a Government we have to, on the one hand, balance the extension of that relief and consider whether or not to exempt some of those additional payments with, on the other hand, trying to ensure that we are maintaining an adequate income to enable the trust to continue its housing programs which, in turn, enables the trust to provide a significant measure of rent relief to more than 45 per cent of its tenants. I think that figure is correct, but I cannot vouch for it; it might even be a little higher. That is a long and somewhat convoluted answer to the questions.

I have to say that I do not fully understand the ramifications of the various rent relief schemes or the jeopardy that might have arisen because of changes to the Federal social security payments. As a result, yesterday I asked my colleague to convene a meeting with me and my officers—and any members of the Government back bench who cared to attend—so that we could be fully briefed on these matters to ensure that we understood the pros and cons of the various schemes in operation.

I cannot answer specific questions because it is not my direct area of responsibility, but with regard to specific questions—and I leave aside the rhetorical Davis-type question of alleged callous indifference—and with regard to the responsible questions that the Hon. Mr Gilfillan asked, I will take them up with my colleague and undertake to give him a formal reply as soon as possible.

VISIT BY ITALIAN PRESIDENT

The Hon. M.S. FELEPPA: First, is the Attorney-General, as Minister of Ethnic Affairs, aware of the proposed visit by the President of the Italian Republic, the Hon. Francesco Cossiga in October this year to Australia and every major city of this country, and secondly, can he say whether the official announcement of the gemellaggio will take place during that month or at the latest before the end of this bicentennial year?

The Hon. C.J. SUMNER: The official announcement has already been made, exchange of letters has occurred, and the gemellaggio is in place. The only thing that has not happened is an official ceremony to mark the occasion. I hope that a situation will arise this year whereby that ceremony can be held, probably in Australia, because it is our bicentennial year.

I expect that there will be some activities promoted by the Italian Government and regions including the Campania region that will occur in Australia, particularly in South Australia, during this year. So, hopefully, an official occasion to recognise the gemellaggio can be found as part of those activities.

I had heard that the President of Italy, Mr Cossiga, was to visit Australia, but I have not received any official confirmation of that fact. Obviously, if that were to occur, the South Australian Government would be very pleased if the President visited our State and would be concerned to offer him the usual hospitality that is offered to visiting heads of State. Indeed, I believe that it would be a considerable honour if the President of one of the major European nations (Italy) was to visit our country during our bicentennial year.

The Hon. C.M. Hill interjecting:

The Hon. C.J. SUMNER: I am not sure about that. I suppose that we could; it is possible. We have had a number of them, not formal ones, but we have had banquets.

The Hon. C.M. Hill interjecting:

The Hon. C.J. SUMNER: I am sure there have been banquets at which I have seen you.

The Hon. C.M. Hill: You have been very tight.

The Hon. C.J. SUMNER: The honourable member says that we have been very tight, and I hope that the press heard that and will tell the people of South Australia what a tight rein the Government has held on Government

spending. In any event, if the President of Italy comes to South Australia the Government will be pleased to welcome him in the usual way. I know that arrangements were in train some years ago for a visit by the former President of Italy, President Pertini, but unfortunately at the last moment the arrangements fell through. I know that that was a disappointment to those people—including the South Australian Government—who had expected to see him in Australia. I hope that the visit of President Cossica of Italy to South Australia, as suggested by the Hon. Mr Feleppa, will happen.

SPEECH PATHOLOGY SERVICES

The Hon. R.I. LUCAS: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Education, a question about speech pathology services.

Leave granted.

The Hon. R.I. LUCAS: On 21 January this year a number of schools in the southern area received a letter from the Acting Senior Speech Pathologist in the southern area, Mr Craig Mattiske. I quote part of that letter as follows:

> Due to increasing demands on our service there have been some changes in the method of speech pathology service delivery to southern area schools for first term. Unfortunately, your school will be receiving no speech pathology service at this stage.

One school that contacted me had between five and 10 students who required speech pathology assistance. I understand that up to 35 schools in the southern area are affected by this and similar letters, with the potential for perhaps 100 to 200 students being so affected.

In yesterday's afternoon newspaper Mr Mattiske criticised the State Government for not keeping promises it had made over a period of years in relation to increasing the number of speech pathologists. I make it clear that I am not making any criticism of Mr Mattiske or the department because they are trying to do the impossible in rationalising very scarce resources. In the past 24 hours parents have raised with me problems that they see in the blanket ban that has been instituted in relation to the allocation of the scarce resources of the Education Department for speech pathology. These people have put to me that by saying to a particular school that no student in that school, irrespective of individual need, will receive speech pathology is a most unfair way of allocating speech pathology, and perhaps it would be better to look at the needs of the individual student. If students have a significant need for speech pathology services, irrespective of the school they happen to attend, resources should be directed to them. My questions to the Minister are:

1. Will he outline the criteria used by the department to cut speech pathology services?

2. Will he review the decision that has been taken to see whether the criteria can be altered to better match individual student needs rather than completely cutting services to some schools?

3. When will the Minister and the Government keep the promise made by the Government to increase the number of speech pathologists in the Education Department?

The Hon. BARBARA WIESE: I will be happy to refer those questions to my colleague in another place and bring back a reply.

CRIMINAL LAW CONSOLIDATION ACT AMENDMENT BILL (No. 5)

The Hon. R.J. RITSON obtained leave and introduced a Bill for an Act to amend the Criminal Law Consolidation Act 1935. Read a first time.

The Hon. R.J. RITSON: I move:

That this Bill be now read a second time.

It is a quite modest Bill, and seeks to do three things. First, to replace the relative risk provision (section 82a (1)) in respect of abortion with a provision requiring a substantial risk to maternal, physical, or mental health. Secondly, it seeks to provide increased psychiatric support for women whose mental health is threatened by pregnancy and to provide support both in the decision-making stage and thereafter. Thirdly, the Bill seeks to alter the statutory time of viability of the foetus from 28 weeks to 24 weeks.

Historically, abortion of pregnancy has been practised for a long time. The Hippocratic oath contains a proscription against abortion, and that would seem to indicate that the problem is thousands of years old. The evolution of the more modern legal rules began in England in 1938 with the case of *R. v Bourne*. In this case a prominent specialist was prosecuted after announcing publicly his termination of the pregnancy of a 15-year-old girl who had been raped. Bourne was acquitted on the grounds that his actions were reasonable and were directed at averting a serious threat to the life and health of the mother. The principles on which Bourne's case was decided became known as the 'Bourne Rules'. More recently, about 20 years ago, a Victorian court put beyond doubt that the 'Bourne' principles extended to serious threat to mental health as well as physical health.

In South Australia, the then Liberal Attorney-General, now Mr Justice Millhouse, observed that the case law principles established in those other jurisdictions were merely persuasive and that there were no binding precedents in South Australian case law. He therefore introduced private members' legislation to codify the principles of previous case law. Consequently, as honourable members will know, the South Australian Parliament enacted amendments to the Criminal Law Consolidation Act (section 82) to provide for lawful termination of pregnancy under certain circumstances.

The amendments provided for lawful termination of a pregnancy of up to 28 weeks gestation providing that a termination performed on the opinion of one practitioner alone was to avert a grave and immediate threat to maternal, physical or mental health. They also provided for termination on the grounds of foetal abnormality.

The provisions for termination with the opinion of two medical practitioners as distinct from a single practitioner acting alone are quite different. In the case of termination with the opinion of two practitioners, it need only be determined that continuation of the pregnancy poses more risk than termination, even though the risk in either case may be slight or trivial.

Since those amendments were enacted by Parliament there has been a steady increase in the number of abortions performed, until now they number more than 4 000 annually. The vast majority are performed on the grounds of risk to mental health, and there is a growing belief, held by medical practitioners and other members of caring professions, that a number of these terminations are performed inappropriately.

At this point, I want to say that as I proceed in support of these amendments, I will not be advancing any ethical arguments based on the value of the foetus or the rights of the foetus or the embyro. I do have personal views about

the rights of the foetus and rights of the embryo, as may some members opposite, but, in fact, those views would not be shared by enough members of Parliament to permit passage of restrictive legislation based on the value of the foetus. What I am proposing here is not the product of an ethic or a philosophy, but is a set of utilitarian amendments based on what many see as sound medical practice in the light of some 18 years experience of the operation of the existing law.

I want to begin with the question of viability. There have been many advances in the care of premature infants, and the old medical proposition that a foetus of less than 28 weeks gestation cannot survive outside the womb is simply no longer true. In the case of premature births with gestation periods between 24 and 28 weeks, very significant survival rates are now being achieved. I am sure that the honourable the Minister of Health has received requests or advice to implement the very change I am now proposing, namely, the reduction of statutory viability to 24 weeks gestation.

As the Hon. Dr Cornwall would know, the mid-trimester terminations are usually done for serious medical indications rather than simply because a child is unwanted. Those terminations are, thankfully, a minority of the total, and I want to emphasise that there is nothing in this amendment that would interfere with a clinician's right to deliver a child prematurely for sound medical reasons. What this amendment does do, however, is to alter the status of the foetus once delivered. If this amendment is passed, then foetuses of gestation over 24 weeks must be considered as premature babies rather than non-viable products of abortion. They will be given care and support appropriate to the circumstances in accordance with sound clinical practice, and will not be denied that care or discarded on the grounds that they may not be wanted.

I now turn to the question of relative risk. As I said at the start, the 'Bourne Rules' require serious threat to life or health, and those principles are codified in our present legislation in relation to abortions which rely on the opinion of only one practitioner. In political terms, at the time of public debate when the present abortion law was before the House, the public was told that the new law was needed to make clear the medical indications for abortion, because case law such as *R. v Bourne* was not binding in this State.

However, what we eventually got was a law that produced *de facto* abortion on demand. The relative risk clause allows termination if the risk to physical or mental health by continuing the pregnancy is greater than the maternal risk of termination. The relative risk clause therefore permits termination when either risk is trivial. It may even be argued that any normal pregnancy is more hazardous than an early abortion, and that any early pregnancy may therefore be terminated upon request. I remind members that this present law was sold to the public as a codification of the medical indications for abortion, and I do not think it is unreasonable for there to be an identifiable risk of some substance in each particular case under consideration.

My amendments, therefore, seek to replace the present relative risk clause with a re-write requiring the identificaton of a substantial risk to maternal health. I have used the word 'substantial', realising that this is less forceful than the wording relating to a single practitioner acting alone. I have not attempted to require grave or serious or life-threatening risk but merely some medical reason of substance to replace the old relative risk clause.

The third limb of these amendments involves the psychiatric support of women presenting for abortion. As I said earlier, the vast majority of terminations are performed on the grounds that two practitioners consider the pregnancy a threat to the mental health of the mother. It is becoming increasingly clear to any members of the caring professions that abortion itself can also be a threat to maternal health. For large numbers of women, abortion constitutes a loss. This loss seems to be, in part, instinctive and cannot easily be rationalised out of existence.

A natural miscarriage is also a great loss. It needs to be grieved over, and indeed women who suffer natural miscarriage do grieve and are often assisted in their grieving by sympathetic friends and relatives. On the other hand, induced abortion is treated as a secret. It is seldom discussed or openly grieved about. It is often repressed, only to surface as a depressive illness one or two years later. This problem is often compounded by pressures surrounding the termination. For example, a very common tale is the story that goes something like this: 'I really wanted the baby, but my boyfriend said he'd leave me if I had the baby, so I had an abortion, but he left me, anyway.'

Another form of pressure is the threat of withdrawal of love by parents or husband unless the abortion takes place. There are many wanted pregnancies that present superficially as unwanted pregnancies because of such pressure and, much as it pains me to say it, most of those pressures come from males. It takes two to make a baby. It is rather sad that one finds oneself trying to help someone through a difficult event—a termination, a difficult pregnancy or a depressive illness—when a little responsibility, a little caring, and a little sacrifice on the part of the male in question might make so much difference.

My amendment requires that, where threat to mental health is the ground for abortion, one of the two practitioners forming the opinion about the proposed abortion must be a psychiatrist. It surely stands to reason that only good can come of such a move. It may be that the proportion of actually wanted, but apparently unwanted, pregnancies which are aborted is quite small, although I am not so sure about that. In any case, an initial contact with a psychiatrist would give patients an opportunity to continue such contact if they so wished, to deal with feelings that follow termination and to deal with some of the other stress factors in their lives which caused the diagnosis of pregnancy to be less than a happy event.

It may be argued by some that there would not be enough psychiatrists to do this work. I seriously challenge that. There are presently 176 psychiatrists on the Medical Register in South Australia. Most psychiatrists would admit they are already doing a considerable amount of work which includes unravelling the aftermath of terminations. To start this work earlier, at the time of decision-making as to abortion, is likely to reduce the amount of work needed later. I know that in the public system there are counsellors and social workers but, in the experience of many members of the caring professions, that service is somewhat overwhelmed by the case load, and the follow-up treatment for people suffering post abortion depression is consequently inadequate in that system.

In the area of abortion, there is enormous scope for the practice of preventative medicine. Of course, all of this is to some extent a matter of picking up the pieces after the event. The truly fundamental preventative measure would be the widespread acceptance by society in general, and males in particular, of more responsibility for the consequences of copulation. Regrettably, our society is moving in the opposite direction, worshipping the word 'rights', but hardly ever mentioning duties.

In summary, this Bill alters the time of foetal viability in line with advancements in medical practice. It requires medical indications for abortions to be substantial, but not

grave or life-threatening, and it offers early psychiatric contact to those women distressed by a diagnosis of pregnancy. I commend the Bill to the Council.

The Hon. J.C. BURDETT: I support the second reading. As the Hon. Dr Ritson said, it does not deal with the question of whether there ought or ought not to be abortion but seeks to improve the original Act of 1969 in the light of modern medical science and experience. It does three things. First, in regard to the risk to the mother it substitutes substantial risk for the concept of relative risk, namely, that the continuance of the pregnancy would involve greater risk to the life of the pregnant woman or greater risk of injury to the physical or mental health of the pregnant woman than if the pregnancy were terminated and substitutes substantial risk.

Secondly, in regard to the psychiatric grounds the Bill requires that at least one of the medical practitioners who form the opinion set out in the parent Act must be registered as a specialist in psychiatry. Thirdly, the latest period at which a termination can be carried out is to be 24 weeks in lieu of 28 weeks as in the parent Act.

These are fairly modest amendments to the parent Act and they are reinforced by the experience of the 19 intervening years. The Bill for the parent Act was introduced by the Hon. Robin Millhouse, as he then was, in 1968. He was the Attorney-General in the Hall Government. He referred, as the Hon. Dr Ritson said, to the Bourne judgment of 1938. It should be noted that this was 30 years before the Millhouse Bill. In that case the facts as reported in the headnote of the report of the case were as follows:

A young girl, not quite 15 years of age, was pregnant as the result of rape. A surgeon of the highest skill, openly, in one of the London hospitals, without fee, performed the operation of abortion. He was charged under the Offences Against the Person Act, 1861, section 58, with unlawfully procuring the abortion of the girl.

In his charge to the jury His Honour, Mr Justice Macnaghten, said:

I do not think that it is contended that those words mean merely for the preservation of the life of the mother from instant death. There are cases, we were told—and indeed I expect you know cases from your own experience—where it is reasonably certain that a woman will not be able to deliver the child with which she is pregnant. In such a case, where the doctor expects, basing his opinion upon the experience and knowledge of the profession, that the child cannot be delivered without the death of the mother, in those circumstances the doctor is entitled—and, indeed, it is his duty—to perform this operation with a view to saving the life of the mother, and in such a case it is obvious that the sooner the operation is performed the better. The law is not that the doctor has got to wait until the unfortunate woman is in peril of immediate death and then at the last moment snatch her from the jaws of death. He is not only entitled, but it is his duty, to perform the operation with a view to saving her life.

Further on in his charge he said:

I mention those two extreme cases merely to show that the law—whether or not you think it a reasonable law is immaterial—lies at any rate between those two. It does not permit of the termination of pregnancy except for the purpose of preserving the life of the mother. As I have said, I think that those words ought to be construed in a reasonable sense, and, if the doctor is of opinion, on reasonable grounds and with adequate knowledge, that the probable consequence of the continuance of the pregnancy will be to make the woman a physical or mental wreck, the jury are quite entitled to take the view that the doctor, who, in those circumstances, and in that honest belief, operates, is operating for the purpose of preserving the life of the woman.

Bourne was acquitted. The Hon. Robin Millhouse, in his second reading explanation (*Hansard*, 3 December 1968, p. 2921), said:

... there was no appeal, therefore, and the law has been regarded as stated by Mr Justice Macnaghten. It is not in all respects, though, an authority of satisfactory standard. Indeed, I believe that in Victoria grave doubt has been cast on it in the past few months. However, it is the law that has been regarded here largely in the past 30 years.

Thus, the Hon. Robin Millhouse implies that his Bill was seeking to make clear that the principles of the Bourne judgment are indeed the law in South Australia as they had generally been taken to be for the previous 30 years. But, it is clear from the charge of Mr Justice Macnaghten that it must be shown that the woman is indeed in danger of death or that the probable consequence of the continuance of the pregnancy will be to make the woman a physical or mental wreck. The Hon. Robin Millhouse is a man of honour, and I am sure that that is what he was seeking to achieve, namely, to ensure that a termination could be carried out only (and I stress 'only') where it was medically considered to be necessary to preserve the mother's life or prevent her from becoming a physical or mental wreck, because, as Mr Justice Macnaghten said, that is really the same thing.

I would argue strongly that the principles of Mr Millhouse's Bill and the resulting Act are not being carried out at present. It is surely common knowledge that many, in fact most, abortions are carried out on the psychiatric ground, and in most cases there is no risk to the life of the mother, nor that she will become a physical or mental wreck. Thus, the spirit and, I believe, the letter of the parent Act are being grossly flouted. The Hon. Dr Ritson's amendment in regard to the psychiatric grounds merely seeks to ensure that the original principles of the parent Act are in fact put into effect.

The amendment in the Bill now before us in relation to substantial risk in lieu of relative risk is, I believe, also a move, in the light of what has happened since, to reinforce the principles of the original Bill of 1968. For the record, I should say that I was opposed to the Bill of 1968 (although of course I was not in Parliament at that time—I have not been here for quite that long), and I have had no reason to change my mind since. However, the Bill now before us improves the situation as proposed in the original Act in the light of practice at the present time, and I support it.

The last thing which the Bill does is reduce from 28 weeks to 24 weeks the latest period at which an abortion can be carried out. The period of 28 weeks was inserted in the light of then medical knowledge and experience. Nineteen years later and with greatly improved medical technology, it is generally accepted that a baby born at 24 weeks is capable of living and has a good chance of survival.

The Hon. Robin Millhouse in his second reading explanation stated that a Bill was passed in 1967 on this subject in England. He said that his Bill followed the principles laid down by the United Kingdom legislation. That legislation adopted the same latest time at which an abortion could be carried out, namely, 28 weeks. Honourable members will be aware that Mr David Alton, Liberal M.P. for Mosley Hill, Liverpool, introduced a one clause private member's Bill to reduce the 28 weeks to 18 weeks. A reading of the articles in the British press of the time shows that there was enormous public reaction on both sides of the question. On Friday, 22 January 1988, Mr Alton's Bill passed the second reading by 296 votes to 251, a majority of 45. By reasonable debate, David Alton had overcome much of the strident opposition to his Bill.

His support came from all over the place. Thirty-six Labour MPs including the shadow Chancellor of the Exchequer risked the displeasure of their colleagues to depart from offical Party policy and voted for the Bill. If they had voted on Party lines, the second reading would have been lost. David Alton's leader, David Steel, himself the architect of the 1967 Bill, opposed the Bill but said that he would support a 24-week period, which is of course what the Bill

before us does. So, I think it is interesting to note that the very architect of the 1967 Bill, the Bill on which our South Australian Bill was based—was prepared to say that he would now support a 24-week period, which is the correct period indicated by current medical practice and technology. I think that supports what I said before, namely, that I think the Hon. Mr Millhouse, if he had moved his Bill at this time, would have opted for 24 weeks.

Returning to the United Kingdom debate, Mr Tony Newton, the Minister of Health (who did not vote on the Bill), said that he had been advised that 22 weeks was considered by doctors to be the earliest possibility of a foetus being born alive, since before then the lungs were not mature enough to operate, even if ventilated. I am not able to assess the merits of this statement, but that is what he said. However, the Hon. Dr Ritson is proposing 24 weeks.

Nine Cabinet Ministers, including Mr John Moore, the Secretary of State for Social Services, voted for the Bill. None voted against; that is to say, no Cabinet Ministers voted against it. Mrs Margaret Thatcher, the Prime Minister, and the rest of the Cabinet abstained. For the first time in the 21 years of the Act, and at the fourteenth occasion when an attempt had been made, David Alton succeeded, at least at the second reading stage, in making a dent in the original legislation.

Many of the members who supported the second reading indicated that they would not support the 18-week limit but had supported the Bill because they supported the principle of the Bill, namely, that the 28-week period should be reduced. They were prepared to support the Bill into Committee but many of them said that in the Committee stage of the Bill they would support a higher limit than 18 weeks. Mr Alton indicated that, in the Committee stage, he was prepared to consider a higher limit than 18 weeks, although in his judgment 18 weeks was correct.

To the uninitiated this situation may seem strange, but all members of this Chamber will acknowledge the propriety of supporting a Bill at the second reading in order to achieve the detail which one desires in the Committee stage, while reserving the right to vote against the third reading if one does not achieve what he or she wants in Committee. From the reports it would appear that Mr Alton will have to be prepared to accept a longer period than 18 weeks or he will lose his Bill, which so far has gone so well for him.

From the reports it would appear that no supporter of the second reading suggested a longer period than 24 weeks. The Bill moved by the Hon. Dr Ritson appears to be very moderate and to be at the top end of the appropriate time. The comments I have made about the United Kingdom parliamentary debate are drawn principally from *The Times* of 23 January, pages 1 and 4; the *Sunday Times—Week in Review* of 24 January; the *Guardian* of 23 January, page 3, and the *New Statesman* of 15 January, page 10.

This Bill has been introduced only today and it has been on the Notice Paper for a short time, so thus far there has not been much public feedback, but today I have had contact with the Mount Barker Christian Council which indicated its support for the Bill. I would like to refer to other matters and, for that reason, I seek leave to continue my remarks later.

Leave granted; debate adjourned.

TOWN ACRE 86 OFFICE DEVELOPMENT

The Hon. DIANA LAIDLAW: I move:

That the report of the Parliamentary Standing Committee on Public Works on the Town Acre 86 Office Development (Tenancy Fitout) be noted.

This report was tabled by the President yesterday and the report assesses the Government's proposal to relocate the central offices of both the South Australian Health Commission and the Department for Community Welfare into the Citicentre building which is under construction on the corner of Rundle Mall and Pulteney Street.

As of January this year, the estimated total cost of the project was $4.686 million. However, it is anticipated that, at the completion of this building in September of this year, the estimated cost will have risen to $4.874 million, or approximately $5 million. In my view, the expenditure of this sum at this time and on this project is an insult to health and community welfare workers in the field, whether they be paid employees or volunteers in the government and non-government sectors. The expenditure represents a callous indifference on the part of the Government to the frustrations that project and program coordinators, together with workers in the field, encounter on a daily basis. The financial constraints under which they labour on a daily basis—and they have been doing so for some time—severely limit their capacity to meet the growing demand for their services. Only this morning—

The Hon. J.R. Cornwall interjecting:

The Hon. DIANA LAIDLAW: The Minister seeks to interject, but I remind him that only this morning he stated on a radio news service that because of budgetary constraints, it would not be possible to implement all the recommendations of the Steer committee report into the IDSC (the report was released yesterday). I understand that the sum required to implement these recommendations is $5 million, which is approximately the same estimated cost of this collocation or relocation.

Members interjecting:

The Hon. DIANA LAIDLAW: I have read the report extremely carefully.

The Hon. J.R. Cornwall: Well, you didn't understand it.

The Hon. DIANA LAIDLAW: I did understand it. In fact, I have some skills in understanding finance. This slight on the community welfare and health workers in the field in the government and non-government sectors has been compounded by the fact that the Public Works Standing Committee expressed reservations about the potential for the collocation/relocation exercise to be cost neutral, that is, to break even over a 10-year period, notwithstanding statements by the Government to the opposite effect, and these statements have just been repeated by the Minister in this place.

Perhaps the most provocative factor arising from the investigation by the Public Works Standing Committee is the revelation that the Government presumes that the amalgamation of the health and community welfare central offices and field services is a *fait accompli*. It is apparent from the report that the whole design philosophy caters for these circumstances and that the estimates for the proposed cost neutral financial outcome over a 10-year period have been based on this premise.

Before I develop further each of these matters, it is important that the major features of the new office accommodation for the Minister, for the DCW and for the South Australian Health Commission should be noted. In doing so, I will respect the request that was outlined in the letter from the Chairman of the Public Works Standing Committee to the President—

The Hon. J.R. Cornwall interjecting:

The Hon. DIANA LAIDLAW: I think it is particularly interesting that the Minister does not want to listen to this matter. He always turns a blind eye to what is happening in the field if he just does not want to see or hear.

The Hon. J.R. Cornwall interjecting:

The Hon. DIANA LAIDLAW: I would not want to think that I was necessarily following your example. Instead of the Minister talking across the table, perhaps he could either listen or leave. I was saying that, in speaking to this report—

The Hon. J.R. Cornwall interjecting:

The Hon. DIANA LAIDLAW: Yes, it will be interesting, but that is another matter for another day. The matter at the moment—

The ACTING PRESIDENT (Hon. G.L. Bruce): Order! There is too much conversation.

The Hon. DIANA LAIDLAW: Yes, thank you for your protection, Mr Acting President. In speaking to this report, I will respect the request that was outlined in the letter from the Chairman of the Public Works Standing Committee to the President that, pursuant to Standing Order No. 453, the evidence relating to the project be classified as a restricted document. This request has been issued because the evidence contains information of detail relating to the proposed security of some of the Health Commission and DCW areas, together with a confidential Cabinet submission.

The site known as Town Acre 86 is bounded by Rundle Mall, Pulteney Street and Hindmarsh Square, with existing commercial buildings forming the western boundary. The current project has been a source of controversy since it was first mooted and I recall factors such as the involvement of the special projects section of the Department of State Development, the proposal that a number of buildings be demolished, and the long-term impact on the character and charm of Twin Street combined with questions about the wisdom of erecting such a dominant, heavy structure at these sites. All those matters plagued the development of the project before it even commenced.

The Hon. J.R. Cornwall interjecting:

The Hon. DIANA LAIDLAW: The Minister will have an opportunity to make a contribution later.

The Hon. J.R. Cornwall interjecting:

The Hon. DIANA LAIDLAW: I would have thought that the issue was so important that he would deign to make a contribution to this debate. I am sure that the Hon. Mr Roberts read the report and understood it before it was tabled. I am also sure that he will agree with the conclusions that I reach.

Today, construction work is well advanced. Completion of the structural concrete work is expected to occur in 1988. The expected date of the overall completion will be September 1988. The building will be 10 storeys in height comprising a basement, a ground floor, 10 upper storeys and a two storey service annexe. The basement is to be given over to car parking with entry from Twin Street. The ground floor will contain retail shops accessible from the Mall, Pulteney Street and Hindmarsh Square. The first to tenth floors are designed for office accommodation. The Government proposes to lease these floors, comprising a total area of 13 992 square metres. On page 4 of its report, the committee noted:

> Leasing arrangements for the whole building are not yet finalised but there have been substantial negotiations between all interested parties and the negotiations are presently in the final stages.

The report then proceeds to note:

> Irrespective of the outcome of the leasing negotiations it is the intention of the Government to fit out the building for the needs of the South Australian Health Commission and the Department for Community Welfare with collocation.

The needs of the Health Commission and the Department for Community Welfare have been determined as requiring eight floors and part of the ninth floor, an area of 11 139.5 square metres. Apparently the use of the remainder of the ninth floor and the entire 10th floor is under consideration by the Government Office Accommodation Committee, with a view to subletting both areas.

Page 7 of the report defines the scope of the needs of the Health Commission and the Department for Community Welfare. I seek leave to incorporate in *Hansard* without my reading it a table listing the accommodation provisions by division.

Leave granted.

	ACCOMMODATION
2321.A.87	Child protection unit
	Aboriginal unit
First Floor	Duke of Edinburgh Scheme
	General purpose meeting room
	Stationery store
	Non-government welfare unit
	Family maintenance unit
2322.A.87	Staff recreation area
	Staff showers
First Floor	First-aid room
	Adelaide community welfare office
	Patient advisory service
	Concessions and payments
	Family maintenance unit
2323.A.87	Executive offices
	Public information unit
Second Floor	Planning and policy development division
	Programming and planning unit
2324.A.87	Ministerial suite
	Commissioner for the Ageing
Third Floor	Library
	Children's interest bureau
	Home and community care unit
	Disabilities services review unit
2325.A.87	Information branch
	PABX room
Fourth Floor	Word processing resource centre
2326.A.87	Finance and accounting branch
Fifth Floor	Administrative services
2327.A.87	Nursing branch
	Internal audit
Sixth Floor	External audit
	Financial services
	Human resources
2328.A.87	Metropolitan health services division
	Country health services division
Seventh Floor	Statewide health services division
	Building services branch
2329.A.87	Public and environmental health division
	Health surveyors
Eighth Floor	Epidemiology branch
2330.A.87	Health surveyors
Ninth Floor	Health promotion branch

The Hon. DIANA LAIDLAW: When members look at these provisions, they will note that the first floor has been planned as the business or public contact floor; the second floor will house the executive offices; and the third floor will accommodate the ministerial offices. On page 8, under the heading 'Design solution', the report notes that both the second and third floors, the executive and ministerial suites, have access to an outdoor podium area. I have no doubt that this feature will be of some comfort to the Minister to burn off some of his exuberant energies if he does not get time to go jogging in the mornings at West Lakes. However, taxpayers, community welfare and health workers generally may also gain some comfort from the reference on page 10

of the report that 'no work is proposed to the outdoor areas'. Nevertheless, the committee adds the qualification:

> These [areas], however, could be upgraded as a separate project by the provision of appropriate outdoor furniture and planting. The areas adjacent to the executive and ministerial offices particularly could be upgraded in this way.

No allowance has been made for such expenditure at this stage and, therefore, one could only assume that by September 1988 the estimated cost of $4.8 million may well rise to $5 million with the incorporation of these features.

In case honourable members consider that the Minister will be deprived by the fact that the project does not provide him with outdoor furniture and plantings on his new third floor podium, they will be consoled to learn (from page 10 of the report) that new furniture will be provided to outfit the executive and ministerial offices to an appropriate standard. Throughout the rest of the building, however, community welfare and health workers will have to make do with 'reusing existing furniture'. These standards of 'them and us' seem quite surprising for a Minister who constantly pleads the cause of social justice, equity and fairness.

The Hon. J.R. Cornwall: Have you seen the furniture in my ministerial office—

The Hon. DIANA LAIDLAW: No, not in recent times.

Members interjecting:

The ACTING PRESIDENT (Hon. G.L. Bruce): Order! This is not the place for conversation.

The Hon. DIANA LAIDLAW: If the Minister is worried about the furniture in his ministerial office, he should look at the wreck that I have to sit in. The wheels fall off my chair and the drawers in my desk are hard to open. If he feels the need for new furniture, he should come and see what is provided for members of the Legislative Council.

Currently, the central offices of the Health Commission and the DCW occupy leased accommodation in nine separate buildings in Adelaide in near city locations. The Health Commission is spread over seven buildings whilst the DCW occupies two buildings. On page 5 of the committee's report, a justification statement for relocation and collocation is incorporated. This was provided in evidence by Mr D.J. McCullough, Executive Director, Corporate Services, South Australian Health Commission. In part, this statement notes:

> The resulting organisational fragmentation, with less than adequate accommodation and facilities provided in some of the buildings, inevitably impacts on organisational efficiency and effectiveness.

This statement, however, has not been fully endorsed by the members of the Public Works Standing Committee. I highlight the committee's findings following an inspection of the city offices that are occupied by the bulk of the workers who will be involved in this collocation exercise. The committee found that the accommodation presently occupied by the South Australian Health Commission and the Department for Community Welfare in Adelaide is of a high standard. Elsewhere, the committee noted it is all good accommodation. These findings seem to be at odds with evidence provided by the South Australian Health Commission.

My own assessment, having visited almost all of the offices at various times over the past eight years (though, admittedly, not the Minister's office in the past five years) would be to endorse the finding by the committee that the accommodation is of a high standard. Having also visited the offices of numerous non-government welfare organisations in recent years, my assessment would be that the current accommodation for the Minister and the central administration of the Health Commission and the DCW is, by any rank, excellent.

One qualification that the committee noted regarded the State Bank building. This building contains considerable asbestos within its construction which the committee noted could lead to major maintenance problems.

In January 1988 the cost of the tenancy fitout and the decommissioning for the relocation project was to be, as I indicated, $4.686 million. I seek leave to insert in *Hansard* a table outlining the details of the estimated costs.

Leave granted.

ESTIMATED COST

The January 1988 estimated cost of tenancy fitout and decommissioning for this project as shown on sketch drawings is detailed as follows:

	$
Fitout cost	3 400 000
Contingency (3 per cent)	104 000
Total fitout	3 504 000
Professional fees	327 000
Decommissioning and lease cost	2 555 000
	6 386 000
Less incentive rebate	1 700 000
Total project	$4 686 000

The Hon. DIANA LAIDLAW: Accompanying this schedule in the committee's report I note three points: first, the anticipated total cost on completion in September 1988 is about $4.874 million based on a projected building escalation rate of 8 per cent a year. I add that one should be aware that the estimates for January 1988 include a contingency of 3 per cent. The committee also notes that the above figures are expected to have an uncertainty limit of no more than 10 per cent. While one hopes that there may be a fall of 10 per cent in these estimates of costs, there is potential for them to rise by a further 10 per cent. The third point is that the estimated cost of fitting out the remaining portion of the ninth floor and providing partitions to form a basic subdivision on the 10th floor is $370 000.

In respect of the estimated commissioning costs, it is proposed that the Health Commission will arrange a Treasury loan repayable over a term to be agreed, and decommissioning and lease commitments relating to existing accommodation. It is envisaged, according to the Health Commission justification statement, that the loan repayment program to be established will minimise repayment levels in the early years when the deficit on costs over savings exists, increasing in future years reflecting higher savings as staff reductions occur.

It is evident from the report that the Government hopes that this repayment arrangement will ensure that the project will break even or be cost neutral over a 10-year period. In respect of this proposition it is important to highlight the committee's reflection on page 1223 under the heading 'Financial Aspect', and I quote:

> A further option, of course, was for the payment period to be extended to make the break-even commitment more achievable.

In my view—and I have checked this with other members in this place and elsewhere—the key word in that statement is 'more'. The use of that word amply conveys the committee's reservations, albeit in a subtle way, that the project will meet the Government's cost neutral objectives, despite the Government's protestations to the opposite.

Beyond this reservation by the committee it is important to note that the realisation of a cost neutral outcome depends heavily on rationalisation within the administration of community welfare and health and staff reductions in each sector. The potential scale of the rationalisation and staff reductions was outlined in the justification report to which

I referred earlier. At this stage I will read part of that justification statement in regard to rationalisation and staff reductions. It states:

Rationalisation of the current accommodation situation is essentially because of the difficulties currently being experienced by the two organisations. Without this collocation, effective communications and organisational efficiencies will be much harder to achieve, and the public will experience even greater difficulties in gaining access to advice and assistance from the two Government agencies involved in this submission. In addition, the location and architectural and engineering constraints presented by the existing leased accommodation will prevent the organisations from effectively introducing cost savings and efficiencies available through new office technology such as networked computers and office automation.

As an aside, I would say that networked computers is one of the greatest fears of community welfare and health staff in respect of amalgamation of the two agencies, because they fear for the confidentiality of information on their files if their computers are networked.

An honourable member interjecting:

The Hon. DIANA LAIDLAW: It is worthwhile and it is about time we asked more questions on that topic. It is quite clear from this justification statement that networking of the computers is an aim of the Government in respect of community welfare and health and that this collocation proposal accommodates that goal. I refer again to the justification statement as follows:

Further, it will not be possible to achieve fully the staff cost savings that would be available from rationalisation resulting from a move to one location. The savings required to offset the cost of moving to new accommodation will result from the implementation of a planned work force attrition program, made possible by the relocation of Health Commission Central Office units into Town Acre 86. Should a decision be made at a future date to amalgamate the Health Commission and the Department for Community Welfare, a higher degree of rationalisation can be achieved if the central office operations of the two organisations are located in the same building. Substantial savings would then arise from combining like functions within the two organisations, for example, computing, administration, finance, accounting, etc. This would result in a reduction in the number of staff required to perform these functions. It is estimated that up to a further $700 000 per annum could be saved if the above additional rationalisation and resultant efficiencies can be achieved as a result of amalgamation.

It is evident from this statement that the legitimate issues to be addressed relating to organisational fragmentation, efficiency and effectiveness are being used as a conducive smokescreen for the broader agenda, and that is eventual amalgamation of the central administration and field services of both DCW and the Health Commission. This assertion is reinforced when one refers to the explanation accompanying this section entitled 'Design Solution' on page 8, where the witness before the committee noted:

The principal design philosophy has been to locate divisions of each department in a manner which will promote efficiency within the building as a whole, and enhance the ability to undertake further changes in operating techniques between the departments.

I have no doubt that the Minister, as has been his form in the past, will seek to derive my observance about his long-term agenda as some sort of paranoia or even worse, yet, when one judges the Minister's past public performance on the issue of coalescence and amalgamation, it is fair to say that rarely has he been prepared to come clean on his long-term objectives. Honourable members may recall the pride with which the Minister advised this Council from time to time that he dreamed up the idea of coalescence or growing together while holidaying at a beach resort in New South Wales in January 1986.

The Hon. J.R. Cornwall: Bateman's Bay.

The Hon. DIANA LAIDLAW: I wish I had been there, I understand it is beautiful.

The Hon. C.J. Sumner: With the Minister?

The Hon. DIANA LAIDLAW: I can assure the Attorney-General that the only good thing about these short sessions that this Government has is that it gives one a little respite from the daily outbursts of the Minister, so I would hardly wish to go to Bateman's Bay with him. From that time until September last year the Minister has been at great pains on each occasion that he has referred to this grand scheme to reassure DCW and Health Commission staff, the non-government sector and ourselves—and I refer also to the Hon. Michael Elliott who has asked questions on this same subject—that he never intended the process to lead to a formal merger in any way, shape or form.

Since September 1987, following questioning in this place, and before the Estimates Committee, the Minister has found all sorts of reasons to justify breaking such a commitment. Over recent months he has constantly sought to reassure anyone who would care to listen that he had an open mind on the future working relationship between the health and welfare sectors. Increasingly, however, instances arise which confirm that this is not the case, that the Minister's preferred course of action is amalgamation or full integration of the Health Commission and the Department for Community Welfare central offices and field services.

One such instance, to which I will allude briefly, is contained in the Human Resources Bulletin, Volume 2, No. 1 of December 1987. Page 1 contains an article by the Chairperson of the Health and Welfare Staff and Development Council, Ms Mary Beasley. Ms Beasley refers to remarks made by the Minister at the combined gathering of personnel from the Department for Community Welfare and the Health Commission to celebrate the finalisation of amalgamation in the staff development area. She said, and I quote:

The Minister further confirmed his commitment to staff development and to the Staff Development Council as being the key elements in the eventual successful total amalgamation of the two agencies.

Ms Beasley saw no reason to refer just to 'amalgamation', but she put in that most interesting qualification by using the words 'total amalgamation'. The Minister's statements, as reported by Ms Beasley and circulated throughout both agencies, were made at about the same time as the Minister released the green paper on health and welfare working together options for the future. It is no wonder that many people throughout the ranks of both agencies, and also in the non-government sector, were sceptical about the integrity of the forthcoming consultation process in canvassing the options for working together.

The Public Works Standing Committee report on the fitout for the new city centre building on Town Acre 86 confirms that those grounds for scepticism back in November and December last year were not misplaced. Despite protestation from the Minister, seeking to reassure us to the contrary, it is clear from any number of perspectives that the Minister generally presumes that amalgamation is a *fait accompli*. I commenced my remarks in noting this report with the statement that I considered that the expenditure of nearly $5 million on a project to collocate and relocate the central administrations of the Health Commission and the Department for Community Welfare from accommodation, which the committee itself acknowledges to be of a high standard, to be an insult to the community welfare and health sectors and, in particular, to the coordinators of programs and field workers in both those sectors—and also, I would add, in the non-government human services sector in general.

The expenditure of this sum of about $5 million seems to indicate a most highly surprising priority on the part of the Government at this time of budgetary restraint. Finan-

cial constraint is the reason given by the Minister for not acting on improving services in the disability area over the past five years—although they would be offset over a period of time. However, he now willingly agrees to find $5 million to be paid off over time for new accommodation for himself and the central administration of the health and community welfare areas.

I believe very firmly that this move confirms the basis for the ill-feeling in the welfare and health sectors and the electorate at large, as was obvious from the Adelaide by-election. People believe that the Government is placing a higher priority on its own well being than that of individuals and families in the community at large. Today a skyrocketing number of individuals and families are finding it increasingly impossible to cope on diminishing household incomes, to a large extent due to rising costs of basic goods and services—State and Federal Government services, and the Liberal Party believes that this is an absolute tragedy. Also, of all the States of Australia South Australia has the largest proportion of people in poverty.

I also note that at a time of increasing demand for services, whether Government or non-government, the DCW is turning away people if they do not fit into the category of No. 1 priority for services—and that relates to child abuse. Because of budgetary constraints, and notwithstanding the policy commitments of the department, very few prevention programs are being undertaken, to bring families together again. From letters sent under the Minister's hand to community welfare groups in November last year, there is also evidence to suggest that community welfare grants to the non-government sector will be targeted to the most disadvantaged in the community because of '... the limited money that is now available for this grant scheme'. So, the Minister himself has acknowledged to non-government organisations the limited nature of the money available, and he would be well aware that the community itself is unable to fund a lot of these organisations.

The Hon. J.R. Cornwall interjecting:

The Hon. DIANA LAIDLAW: If the Minister cared to listen and did not always talk so much he would realise that I am criticising the fact that the Government, through Cabinet, has endorsed this decision to go ahead with the Town Acre building. The outfitting was organised well before the Public Works Standing Committee even saw this report. The Cabinet submission—to which I am not allowed to refer—makes quite evident that all this (involving expenditure of nearly $5 million) was decided by Cabinet and Government some one year ago, and this report and decision was referred to the Public Works Standing Committee just a few short weeks ago. So, I do understand, as I worked in ministerial offices for some time; admittedly, it was some years ago so perhaps the rules have been changed.

I also note that the non-government sector, in relation to which the Government has indicated that due to limited funds available a reassessment of their organisation will be undertaken to consider their capacity to fund their own programs, is at the moment increasingly unable to meet the growing queues for help. Its resources are stretched to the limit, generally well beyond its capacity to cope. Paid staff and volunteers are being called on to do more with less, and many long serving organisations, with which I have contact, are finding it increasingly difficult and more time consuming to attract necessary or essential funds from the Government sector or the private sector to maintain even a basic service.

In conclusion, I believe it is a highly questionable and most sensitive decision by the Government to make such a commitment to this project at a time of budgetary constraints. Indeed, severe difficulties are being experienced by families and individuals in the community, by non-government organisations, and by the Government in maintaining programs. I also object to this decision because it is clear that the underlying objective in the longer term is amalgamation. That was presumed by the Government some time ago, yet it has only just circulated a discussion paper on the matter. What is happening ignores disquiet about Government moves in this area, and I find it insulting to community welfare and health sectors, both Government and non-government.

The Hon. T.G. ROBERTS secured the adjournment of the debate.

REMUNERATION ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 21 October 1987. Page 1386.)

The Hon. C.J. SUMNER (Attorney-General): The Government opposes the Bill which, in short, gives legislative backing to enable Opposition shadow Ministers to apply to the Remuneration Tribunal to supplement their income because they are shadow Ministers. Secondly, it would provide for the Australian Democrats to apply to the tribunal for research assistance. Regarding the first point, the Hon. Mr Davis shakes his head, so I assume that that means that he will not so apply. However, apparently the Democrats want to facilitate applications to the tribunal by Opposition shadow Ministers to supplement their salary. The Government opposes that if for no other reason than it is unnecessary. In 1986, in Determination No. 1, the Remuneration Tribunal observes:

> During public hearings it was put to us that we should give consideration to establishing an expense allowance for shadow Ministers. On the basis of the information supplied to us we were unable to determine any allowance for this purpose. Within the framework of our ability to do so, we would be prepared to give such an allowance further consideration at a subsequent review, provided sufficient information is put before us to enable us to actively assess the costs incurred.

Therefore, I think that is the answer to the situation. There is no need for legislation: it is a matter for shadow Ministers to determine whether they wish to put a claim of that kind before the Remuneration Tribunal. It looks as though the Remuneration Tribunal accepts that they at least have some ability within the existing legislation to consider such a claim. Therefore, the matter seems to me to rest with the shadow Ministers. The legislation appears to permit an application from them to the Remuneration Tribunal for a supplement to their income by way of an expense allowance.

With regard to the second purpose of the Bill, namely, to provide research assistance for the Australian Democrats, it is interesting to note that the Bill is specifically designed to cater only for the Australian Democrats in realistic terms; that is, it does not actually cater for research assistance in terms of staff facilities and services that would be available to either the Government or the Opposition. Therefore, the Bill, because of the way in which it is drafted, will provide only for the Australian Democrats to apply to the Remuneration Tribunal for an award for assistance in relation to staff facilities and services—that is, only the Australian Democrats in the context of the present Parliament. They have drafted the Bill to refer—

Members interjecting:

The Hon. C.J. SUMNER: Well, I will come to that. They have drafted the Bill to refer not specifically to the Australian Democrats but to any member of Parliament who is

not a member of the Government or the Opposition in the House of Assembly or the Legislative Council. Therefore, presumably it enables the Australian Democrats to apply to the Remuneration Tribunal for extra staff, extra services and extra facilities. It may apply to Mr Stan Evans, MP, but one is not quite sure whether or not he is in the Opposition in the House of Assembly.

An honourable member interjecting:

The Hon. C.J. SUMNER: That is what I am saying: we are not sure. This provision applies to any member of Parliament who is not a member of the Government or the Opposition in the House of Assembly or the Legislative Council. I raise this query as to whether that would encompass Mr Stan Evans or Mr Peter Blacker. In any event, it certainly encompasses the Democrats, so it is a Bill that is designed to enable the Democrats—and the Democrats alone, no-one else—to apply to the Remuneration Tribunal for extra perks.

The Hon. M.J. Elliott interjecting:

The Hon. C.J. SUMNER: No, that is what you are after.

An honourable member interjecting:

The Hon. C.J. SUMNER: You read the Bill. You are after extra perks.

An honourable member interjecting:

The Hon. C.J. SUMNER: The extent of staff facilities and services. The Bill states 'in addition to those available to members generally'. In other words, clause 3 specifically isolates the Democrats as the beneficiaries of such an application.

An honourable member interjecting:

The Hon. C.J. SUMNER: Just a minute. There is all the Opposition and the Government backbenchers.

The Hon. M.J. Elliott: What do you think the first part of clause 3 is related to?

The Hon. C.J. SUMNER: The first part of the clause does not apply to it. This section says that it applies to any member of Parliament who is not a member of the Government or the Opposition.

The Hon. M.J. Elliott: What is clause 2 all about?

The Hon. C.J. SUMNER: This section provides that the tribunal on application of a member or group to which this section applies has jurisdiction.

The Hon. M.J. Elliott: Clause 2 picks up the Opposition and clause 3 picks up anybody else.

The Hon. C.J. SUMNER: No it doesn't. Clause 2 picks up the Opposition. Right?

The Hon. M.J. Elliott: That is right. Clause 2 picks up the Opposition and clause 3 picks up everyone else, so that means that everyone is covered one way or another.

The Hon. R.J. Ritson: It seems a bit fishy to me.

The Hon. C.J. SUMNER: It seems fishy to me, too.

The Hon. R.I. Lucas: We all get extra staff?

The Hon. C.J. SUMNER: We all get extra staff, apparently. The reality is that it is an Australian Democrat initiative that is designed to get additional assistance for the Australian Democrats. The Government does not believe that the Remuneration Tribunal is the appropriate venue to make those decisions.

The Hon. M.J. Elliott: Who should?

The Hon. C.J. SUMNER: Well, it is a matter for the Parliament, basically.

The Hon. M.J. Elliott interjecting:

The Hon. C.J. SUMNER: It is a matter for the Parliament to determine what happens.

The Hon. M.B. Cameron: You mean, what facilities we have and what offices we have?

The Hon. C.J. SUMNER: Yes, absolutely.

The Hon. M.B. Cameron: I will be writing you a letter.

The Hon. C.J. SUMNER: You can write to me.

The Hon. M.J. Elliott interjecting:

The Hon. C.J. SUMNER: No, you are sloughing it off to the Remuneration Tribunal.

The Hon. M.J. Elliott: But it is this Parliament that makes determinations to create a method for doing it.

The Hon. C.J. SUMNER: The Remuneration Tribunal has no particular expertise in this area. It is not appropriate that a Remuneration Tribunal should determine questions of staff facilities and services; it is there to determine salaries and allowances. It has no expertise to deal with these particular issues. In any event, they are matters for consideration by the Parliament as part of the normal budget process.

The Hon. M.J. Elliott: We can't insert money clauses, as I understand it.

The Hon. C.J. SUMNER: You can insert indicated money clauses or you can pass motions; you can do all sorts of things.

Members interjecting:

The ACTING PRESIDENT (Hon. G.L. Bruce): Order! There is too much audible conversation.

The Hon. C.J. SUMNER: It seems to me that there is really no case for suggesting that the Remuneration Tribunal does have the capacity to deal with issues of staff facilities, and the like. That is a matter for the Parliament to determine as part of the budget process. If honourable members want extra staff or extra facilities, then they should take it up in the appropriate way, which is through the Presiding Officer of the Parliament, who will then place it in the context of the appropriations or budget bids for the Parliament. That is the appropriate way to go about it. There would then be an assessment of the validity of those bids in the context of the other priorities which the Government has.

I oppose the second aspect of this Bill, which would enable the Remuneration Tribunal to determine facilities, services and staff for members of Parliament, designed as it is to further assist the Australian Democrats, who are quite well served in terms of staff in this Parliament. They are certainly better served than Government backbenchers. Two Democrats have a secretary. It is interesting to note that when the Hon. Mr Milne was the Australian Democrat member of Parliament he shared a secretary with a Liberal member, but apparently that is not good enough for the new breed. The Government recognised that fact and gave them a secretary for themselves. Mr Milne was able to cope with his workload.

The Hon. C.M. Hill interjecting:

The Hon. C.J. SUMNER: Yes, the Hon. Mr Hill, together with the Hon. Mr Milne (the two grandfathers of the Council), shared a secretary.

The Hon. C.M. Hill: Until you stopped it.

The Hon. C.J. SUMNER: I don't know whether we stopped it.

The Hon. C.M. Hill: You gave the secretary to Mr Milne.

The Hon. C.J. SUMNER: That's right.

The Hon. C.M. Hill: In return for some favour.

The Hon. C.J. SUMNER: No.

Members interjecting:

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

The Hon. C.J. SUMNER: After many years of work, the Hon. Mr Milne felt that the Democrats needed a secretary of their own and, as a result of the reorganisation of secretarial staff for the Parliament, the Democrats (Mr Milne and Mr Gilfillan, as they were then), received a secretary. However, I point out and emphasise that, prior to the Hon. Mr Gilfillan's arrival, the Hon. Mr Milne, the lone Demo-

crat (and there were not even two of them as the balance of reason at that stage) carried out all the work that it now takes two Democrats to perform, and he did it with only one secretary, who was shared with the Hon. Mr Hill.

The Hon. R.I. Lucas: Is the work that they now do any better?

The Hon. C.J. SUMNER: No, I would say that it is significantly less effective than the work that was carried out by the Hon. Mr Milne.

Members interjecting:

The ACTING PRESIDENT: Order!

The Hon. M.J. Elliott interjecting:

The Hon. C.J. SUMNER: That's all right. You can cope with the people about those matters.

The Hon. R.I. Lucas: Are they offering to support amendments if you support a secretary?

The Hon. C.J. SUMNER: Apparently. Mr Lucas is very quick on the feet. He picked up that the Hon. Mr Elliott interjected and said, 'What about your Electoral Act amendments if you don't give us more staff?' That was the effect of it: give us more staff and we will support you in the Council on policy issues. There is no doubt that the Hon. Mr Lucas is very sharp.

Members interjecting:

The ACTING PRESIDENT: Order!

The Hon. C.J. SUMNER: He picked that up.

Members interjecting:

The ACTING PRESIDENT: Order!

The Hon. M.J. ELLIOTT: On a point of order, I object most strenuously to the sorts of insinuations that are being made by the Attorney-General. Quite clearly, he has misconstrued the interjection. The problem is that, if one does not have sufficient research assistance, there is always the danger of one's making—

Members interjecting:

The ACTING PRESIDENT: Order! There is no point of order. If people want to make audible comments in the Chamber, and have them answered, it is there. The only way for an honourable member not to rise on such a point of order is for him not to make audible comments.

The Hon. M.J. ELLIOTT: But he put on the *Hansard* record things that were not said and, as such, I object most strenuously.

The ACTING PRESIDENT: Order! There is no point of order. If you want to interject, and the interjection is responded to, *Hansard* will take that down.

The Hon. C.J. SUMNER: Hear, hear, and they have on this occasion.

Members interjecting:

The Hon. C.J. SUMNER: There were two interjections, one of which was from the Hon. Mr Elliott about the Electoral Act and the problems that we might have if we did not agree with this Bill; that was picked up by the Hon. Mr Lucas and was elaborated on somewhat by me. So, in the past the Democrats shared one secretary with Mr Hill and that was for one person who did all the work that is now done by the two Democrats. Following the 1982 election, one secretary was permitted for two Democrats. More recently, to the chagrin of the Opposition, and with some justification, the Democrats were allocated one secretary and a research officer during the parliamentary session.

The Hon. M.J. Elliott: A different one each time. We spend half the time training them.

The Hon. C.J. SUMNER: You shouldn't look a gift horse in the mouth. The fact is that, since the Bannon Government took office in 1982, there have been increases in facilities by way of staff available to members of Parliament. The Liberals now have two secretaries and a research officer.

The Hon. M.B. Cameron interjecting:

The Hon. C.J. SUMNER: You can take up the question of word processors with the President.

Members interjecting:

The ACTING PRESIDENT: Order! A member is on his feet. He will be heard in reasonable silence.

The Hon. C.J. SUMNER: The complement for the Liberal Party is now two secretaries and one researcher, compared with the 1979 to 1982 Labor Opposition having one secretary for all backbenchers and one secretary for the Leader of the Opposition (which was me), and no researcher at all. Despite the request to convert the stenographer that I had into a ministerial officer, I did not have one, and that request was refused. However, the Bannon Government converted that steno-secretary into a ministerial officer for the Hon. Mr Cameron, which means that he now has a ministerial officer and the Liberals have two secretaries, compared with the Labor Opposition backbenchers, who had one secretary between them.

The Labor Government backbenchers now have two secretaries, whereas under the Liberals, the Government backbenchers previously had only one secretary. So, there has been an increase in secretarial assistance to the Democrats. They now have a full-time secretary plus a part-time researcher during parliamentary sessions, and each group of backbenchers has the assistance of one additional secretary compared with what occurred between 1979 and 1982, and they have the option to convert a stenographer to a ministerial officer. That is quite a significant improvement over the situation that applied when I was Leader of the Opposition. I did all the research and dealt with all legislation with only one stenographer.

The Hon. M.B. Cameron: You'll have us in tears in a minute.

The Hon. C.J. SUMNER: You should appreciate the efforts that were made in those days. So, there has been an increase in staff to members of Parliament. One could argue that it is not adequate but, if members argue that it is not adequate, then it ought to form the basis of a submission to go through the President into the budget process, and that action should occur with respect to staff and other facilities, such as word processors, and the like. It is not appropriate—

The Hon. M.J. Elliott interjecting:

The Hon. C.J. SUMNER: Well, we would certainly look at that, because it is not just back-bench members of the Opposition and the Democrats who are pressing for more facilities and staff: Government backbenchers would like additional assistance, too.

Members interjecting:

The Hon. C.J. SUMNER: It may have higher priority than a change of toilets. That is a matter for the Council and the Parliament to determine. Whether members want gold plated toilets, extra word processors, additional staff or an upgraded bar is a matter for the Parliament to consider.

The Hon. L.H. Davis: We didn't ask for the fridges.

The Hon. C.J. SUMNER: No, but you are making good use of them, I understand.

Members interjecting:

The ACTING PRESIDENT (Hon. G.L. Bruce): Order! The honourable the Minister.

The Hon. C.J. SUMNER: I oppose the Bill.

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

FREEDOM OF INFORMATION BILL

Adjourned debate on second reading.

(Continued from 21 October. Page 1387.)

The Hon. L.H. DAVIS: In Western world countries, there has been, I suspect, a certain feeling of helplessness on the part of the individual, who has seen a burgeoning bureaucracy with all its associated red tape. This has made it vital for Governments to communicate information with clarity and with a sense of purpose. Many Western world countries in recent years have paid increasing attention to the question: how much Government information should be available to individuals and/or corporations? What information should not be made available to the public? What criteria should be used to determine this? What right of appeal is there for those who believe Government information has been improperly withheld? Should the right of appeal reside with a Minister of the Government, a court or an administrative tribunal? How soon should information such as Cabinet records be made available—30 years or 50 years?

Freedom of information legislation is a relatively recent concept, having its roots in Sweden and in the United States in the 1960s where persistent lobbying saw the passage of the world's first Freedom of Information Bill. But what do we mean by 'freedom of information'? At the outset it is perhaps appropriate to understand the terms themselves: freedom of information, open government, privacy, secrecy, and ombudsman. Freedom is a complex notion, pursued by philosophers from Aristotle through to John Stuart Mill. Mill, for example, said:

> The only freedom which deserves the name is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it.

The concept of freedom of information follows Mill's view—that individuals or corporations can pursue information from Government departments or statutory bodies which may be required for a variety of reasons—to have a better understanding of issues or to explain the reasons for a Government decision, or to have a better understanding of the decision itself, to assist the interest groups formulate an approach to Government on a particular issue.

But implicit in Mill's *dictum* is the right to preserve the privacy of others. Information impinging unreasonably on the freedom of others would not be available for public perusal, that is, personal information on individuals whether public servants or not, although one could ask to specify duties of a public servant. Nor would other information, such as Cabinet records, certain commercial, scientific, technical information, and information disclosure which was prohibited by statute and certain Federal/State agreements, be available.

I can do no better than restate the words of the then Federal Attorney-General (Senator Durack) when in June 1978 he introduced the Freedom of Information Bill.

The Hon. R.I. Lucas: Was he a Liberal?

The Hon. L.H. DAVIS: Yes, he was a Liberal. He was the Attorney-General in the Fraser Government. He was a very good Attorney-General, rather underrated as a politician—a quiet achiever. On that occasion he said:

> The Freedom of Information Bill represents a major initiative by the Government in its program of administrative law reform. It is, in many respects, a unique initiative. Although a number of countries have freedom of information legislation, this is the first occasion on which a Westminster style government has brought forward such a measure. This Bill, together with the Archives Bill, which is the responsibility of my colleague the Minister for Home Affairs (Mr Ellicott), will establish for members of the public legally enforceable rights of access to information in documentary form held by Ministers and Government agencies except where an overriding interest may require confidentiality to be maintained. The basic principles of the Freedom of Information Bill are simple:
>
> *(a)* Government departments and authorities should make their structure and functions known to the public and publish the rules and guidelines they apply in making decisions affecting members of the public.
>
> *(b)* Members of the public are entitled to access to documents held by Government departments and authorities unless there are special reasons for not making those documents public.
>
> Such a right of access cannot, of course, be absolute. Complete openness of government is not possible. For some purposes, confidentiality is essential. It is widely recognised that governments, like individuals, families and business organisations, cannot operate effectively without a certain amount of privacy. The crucial element in drafting the Freedom of Information Bill has been to strike the appropriate balance between openness and secrecy . . . The Bill establishes the general principle of openness. At the same time, it identifies and defines those circumstances in which the Government considers that confidentiality must be maintained.

The Hon. C.M. HILL: I draw your attention to the state of the Council, Sir.

A quorum having been formed:

The Hon. L.H. DAVIS: Senator Durack further said:

> Thus the Bill contains provisions to protect personal privacy and confidential commercial information, vital national interests such as security and defence, and the conduct of government activities for which confidentiality is essential. But even in these cases the Bill does not prohibit information being made available. The Bill emphasises that Ministers and agencies are free to make information available or to give access to documents in any case where this may properly be done.

According to Ronald Wraith, in his book on open government, *The British Interpretation*, open government is:

> An 'open' system of government is usually taken to mean one in which there is a positive requirement, either in the Constitution or in statutes, that Government shall disclose and give access to all official documents which have progressed beyond a certain stage, variously defined but conveniently summarised in the expression 'working papers', that is, documents which represent firm decisions with specified exceptions of matters which would harm the public interest if disclosed.
>
> A 'closed' system, by contrast, is one in which there is no such requirement but where it lies in the Government's discretion to make available official information which in their judgment it would be in the public interest to disclose.

It is not inappropriate to note that in the Westminster system of government a Minister is accountable to Parliament, whereas in America Cabinet is appointed by and is responsible to the President. From this doctrine of ministerial responsibility the Westminster system (Australian style) has evolved several methods of obtaining information in the Parliament itself.

Both the House of Assembly and Legislative Council in this State set aside the first hour of each day for the presentation of petitions, ministerial statements and, most importantly, parliamentary questions. Indirectly, the public through their member of Parliament can have the opportunity to probe the Government on matters of potential importance which have either been discreetly set aside or dealt with unsatisfactorily. Statutory authorities, such as the Electricity Trust of South Australia or the South Australian Timber Corporation, are required to produce an annual report which must be tabled in Parliament, within a specified period, as the Attorney-General would well know. These are public documents.

On the financial side the State budget, to be presented this year, presumably in August, contains a good deal of information, but to the general public it is not a readily understood document. More useful perhaps is the Auditor-General's Report which reviews the spending of Government departments and statutory authorities and reports on any irregularities or defects in the administration and/or accounting for revenue and expenditure items. In the past few years the budget has been presented to Parliament in

program form, thus providing much more detail about proposed expenditure than was the case previously. Committees of members of Parliament in another place have been established to review proposed Government expenditure. These committees are open to the public. There is also a State Information Centre in the AMP Tower in Grenfell Street which sells a wide range of publications in addition to producing a handbook which lists this range of publications.

In the early 1980s a working party was established by the Department of Local Government, I think then under the prestigious leadership of the Hon. Murray Hill, which produced a report on information services. Some of the recommendations of that report were interesting, namely: resources should be provided to enable the State Information Centre to publish annually a Directory of South Australian Government Services; Government departments should inform the State Information Centre of all material produced for public consumption, and ensure the availability of such publications through the centre; and public libraries should establish local information files where appropriate within the local information network. Many of those initiatives are now in place.

The increasing interest in freedom of information legislation in Western world countries during the 1970s no doubt reflects the public's concern and at times frustration with big government, which they perceive is growing inexorably year by year and, the red tape that increasingly goes with bigness, the increasing difficulty of finding the right department and/or person to field your complaint or question. There has also been a growing concern about secrecy in government. We have defined freedom of information and open government. It is also important to recognise in discussing the freedom of the public to have access to information from governments or statutory authorities that personal privacy should be protected. Privacy is essentially complementary to freedom of information. The Law Reform Commission observed in its 1977 discussion paper 'Privacy and Publication':

> There is no conflict between the concept of open government and protection of privacy. Privacy is an individual right, preserving individual personality; secrecy is a governmental concern by which leaders seek to restrict information for their public activities.

Government policy on privacy has been developed over recent years and some States have their own privacy committees. I think there would be widespread agreement as to the areas which could properly be said to belong in the privacy basket. It would include publication of information about private lives where there is no legitimate public interest; home, family and personal relationships; and illness, injury and distress. American law draws a distinction between public figures and private individuals.

Sir Harold Wilson had a non-legal friend who defined the right of privacy in a most appealing way, namely:

> Newspapers will accord to the general public the same rights of privacy they accord to their own proprietors, or even the proprietors of other newspapers.

There are also important questions in respect of information concerning individuals. An individual should know the information held about him and have the right to check it. There is the concern of personal data being abused, for example, names are sold or made available to salesmen or information may be misused on a person's transfer from the public to the private sector. The potential for abuse has been increased by the widespread use of facilities to store an enormous quantity of information easily, quickly and compactly.

The Hon. R.I. Lucas: Are we talking about Neal Blewett?

The Hon. L.H. DAVIS: It is tempting to talk about Neal Blewett, but I will leave my colleagues in the Federal Parliament to pursue that subject, as I am sure they will. Actually, when one thinks about it, this would be the third leg in the South Australian triella: Mr Hurford has fallen over, Mick Young fell over himself and Mr Blewett may well be needing more than Medicare. It is leaving Peter Duncan unaccountably clean at the moment, but I am sure that his time will also come.

The difficulties which the average citizen has in obtaining information from Government departments and statutory authorities is often matched by major corporations. That is not to say it is the fault of the Government agency *per se* but a fact that bigness necessarily brings with it complications in communication. Which is the appropriate department to approach? Are your scissors thick enough to cut through the red tape? This is tacitly recognised with the growth of administrative appeals tribunals, in the area, for example, of consumer affairs, and the appointment of the Ombudsman, both at Commonwealth and State levels.

Professor Richardson, the first Commonwealth Ombudsman, appointed in 1977, has stated that the basis of the Ombudsman legislation is to render the Public Service accountable for its administrative actions. His role is to investigate complaints about unsatisfactory administrative action on the part of Government departments or statutory authorities serving the public, such as Telecom, or marketing boards. There is no charge to lay a complaint and anyone can complain. That was the position, but the rules are changing. The Commonwealth Ombudsman can examine the file or any subject or manual on which a decision is based except security files or Cabinet decisions. When the Ombudsman investigates a complaint, the department involved must give a reason for the action taken and this is passed on to the complainant. The role of the Ombudsman at State level is similar: to investigate complaints from citizens about administrative acts of State Government departments, State statutory authorities or local government councils.

That provides some background. I now turn briefly to freedom of information legislation, which was pioneered in the United States in 1966, and that country together with Sweden has made the 'right of citizens to know' a statutory right. Norway and Denmark also have freedom of information Acts, although the right to know is not as clearly enunciated. In Canada the Government introduced a green policy paper on access to public documents in 1977 and in October 1979 the conservative Government led by Prime Minister Joe Clarke introduced a Bill. The Canadian experience is interesting, because it has a Westminster-style Government.

This Bill provided for the disclosure of Government information on request with certain categories exempted. Government institutions had to advise the information available which would come under the scope of the Freedom of Information Bill. Individuals or corporations could request specific information; an application fee would accompany this request. The Canadian legislation specified four areas where information was exempt from disclosure—in many ways not dissimilar to the legislation that operates at the Federal level.

So, that is the background and, as the Attorney-General would be more aware, it was the Labor Party, through Gough Whitlam, during the 1972 election campaign, which undertook to introduce a United States-type Freedom of Information Bill, and it took from that time in 1972 through to when the legislation was introduced by the Fraser Gov-

ernment many years later, for Australia to obtain freedom of information legislation at the Federal level.

I now turn to the Bill before us, which was introduced by the Hon. Martin Cameron. It is pleasing to note the support for this legislation from the Library Association of Australia. I shall quote from a letter dating back to October 1976, when the Library Association of Australia, through the President of the South Australian Branch, Alan Bundy (who, indeed, is now Federal President of the Library Association of Australia), stated:

> The Library Association of Australia's Information Policy Statement, 'The Need to Know', states:
>
> 'The LAA believes that Government has a particular responsibility to ensure that information is available to the individual citizen. In applying this principle the LAA believes that: the right of every Australian to information should be recognised by both Federal and State Parliaments; and legislation should be framed that both ensures an effective information system for Australia and requires responsible authorities at all levels to guarantee the citizens' access to it.'
>
> In a free and democratic society, citizens have a right to know about the actions of government. A better informed electorate leads to a more effective democracy. Accountability is a central precept of the Westminster system of government.
>
> In addition to providing accountability, a Freedom of Information Act would require Government departments to review their actions and more clearly define policies and procedures, leading to more effective administration.
>
> Consequently, this association urges you to support the Freedom of Information Bill in its passage through Parliament.

This letter was referring to the private member's Bill introduced by my colleague the Leader of the Opposition in the Council, Martin Cameron, on 20 August 1986—over 18 months ago, when he first took up the challenge to bring freedom of information legislation into Parliament.

I want to develop one further point, in conclusion, and this relates to the point that was alluded to in that letter from the Library Association of Australia, namely, that freedom of information legislation acts as a kick-starter to more effective Government administration. In a subsequent letter from the Library Association of Australia, dated 25 February 1987 and signed also by Alan Bundy, the following point is made:

> Cost should not be the issue which decides the future of this important Bill, any more than cost is the fundamental issue in the conduct of other elements of our democratic society, such as State Parliament itself.
>
> Any Government agency which has produced high costings is either apprehensive about the legislation or has a remarkably inefficient information retrieval system.
>
> This Bill proposes nothing more than a legislative framework for the rights of all South Australians in their dealings with the State Government and its agencies in our complex society. Again, in the interests of a democratic South Australia, we urge you to support it.

I would argue that point very strongly, as has my colleague the Hon. Martin Cameron. The information systems in the South Australian Government are still very suspect. That matter was canvassed at length when we were moving for the establishment of a public records office. It was pleasing as a private member to see the Government accede to the pressure from the Opposition in establishing that public records office some time ago. But I reiterate the point that was made then: the record systems of the South Australian Government are far from efficient. Certainly, freedom of information legislation would demand an overhaul of those systems, because without effective and efficient administrative information systems certainly freedom of information legislation would not work. I strongly endorse the comments that have been made by my colleagues the Hon. Martin Cameron and the Hon. Robert Lucas, who have also supported this initiative.

The Hon. M.B. CAMERON (Leader of the Opposition): I intend to reply to this debate at a later stage this evening. I seek leave to conclude my remarks later.

Leave granted; debate adjourned.

LOCAL GOVERNMENT ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 16 February. Page 2751.)

The Hon. I. GILFILLAN: I do not intend to canvass the Bill at length. It has been the subject of very detailed analysis outside this place and several members who have spoken to it have made very good contributions. I do not think that anything will be gained by my going over it in detail, especially with a long Committee stage ahead of us tomorrow.

With great pleasure, I can record the obvious wholehearted support of the Hon. Mr Lucas for my comments, at least at this stage. The Bill has evolved from quite an extraordinary amount of consultation. Despite some criticism levelled at the Minister, I believe that in this matter the Government has gone to some pains to get the reactions and opinions of those involved. Probably the most unfortunate incident was the change from an original draft of the Bill that had been canvassed early last year to a Bill which was eventually introduced in this place with very little communication with the Local Government Association in particular from the time discussions ended and the time the Bill was introduced. This resulted in an unhealthy degree of suspicion and misunderstanding that put the Bill introduced at a disadvantage almost from the start.

I put on record the fact that I regard the LGA as one of the most representative associations of any of which I have had experience, whether Government, industry, sporting, or whatever. I note in passing that it is interesting that the LGA tends to refer to itself as an industry. I do not doubt that local government is a tier of government, and it is on that basis that I regard its significance as a contributing factor to the wellbeing of South Australian society. Because I have such a high regard for the LGA and believe it to be so truly representative of councils, I heed closely and put great store in its recommendations and opinions.

I was most interested to receive a delegation from the LGA on 18 November last year (it was not the first but was a relatively substantial exercise) to look critically at the legislation. The President (Councillor Ken Price), the Assistant Secretary-General (Don Roberts) and the Legal Adviser (Charles Muscat) of the LGA attended a meeting with me in Parliament House. We went through the Bill, and they outlined a plethora of criticisms of varying degrees of importance. On 20 November last year, I received a full briefing from Michael Lennon of the Department of Local Government dealing specifically with concerns of the LGA. Listening to what he was saying, I could see that there was a large area of misunderstanding and it would be well to get both parties together to hear how they sorted out face to face what I understood to be misunderstandings.

Consequently, I brought together representatives from the department and a representative group from the LGA, as well as the Parliamentary Counsel who was in charge of drafting the legislation. That meeting took place on 23 November last year. The department was represented by Mr Michael Lennon and Jenny Gerlach; the LGA by Ken Price, the Secretary-General (Jim Hullick), and Charles Muscat. At the meeting, I was led to believe that this process sorted out many of the misunderstandings, with a require-

ment in some cases for possible rewording or redrafting. The meeting sifted out meaning from a cloud of disagreement and discontent, and I believe it set the course for a much clearer view of what we were dealing with in the Bill. Obviously, there are still on file from the Minister some amendments to be considered, some of which I think relate to that discussion.

The only other area with which it is important for me to deal now is to outline the substantial areas of disagreement or indicate recommendations I would make. If necessary, I shall be happy to support or draft amendments to this effect. I am sorry that the Bill before us does not have in it the levy proposal—as an alternative to the minimum rate—which was in the original draft. Members who have followed this rather interesting evolutionary process will recall that there was proposed an alternative levy—not the service charge levy process—that would have embraced many more components in providing funding support for a council. That levy procedure was quite warmly received, as I understand it, by the LGA, and it is a pity it is not in the current Bill. In Committee, I will move an amendment to have dealt with and considered a process similar to what I am describing.

It is probably appropriate now to make a point about minimum rates. This issue seems to have loomed like a massive deciding factor on the value of the Bill. It is an emotionally charged issue that has received far more specific attention in discussions and publicity than has any other factor in the Bill. There was one minor hiccup in the LGA's approach. The Hon. Diana Laidlaw quoted a letter from Councillor Ken Price about the association's attitude to minimum rates, and those interested can refer to it in her speech. It was not news to me, as I had received exactly the same letter. It was a little alarming for me to get the letter, because it represented quite a substantial contradiction of what had been until then the consistent public position of the LGA on minimum rates.

Since receiving that unfortunate letter the LGA has emphatically reverted to the public stance that it will be determined to push for the retention of the minimum rate as is currently established in legislation. I indicate that, as far as we are concerned, we are influenced by that attitude; that it is the LGA's right to have a strong bearing on legislation relating to this matter and its opinion that this must be retained is persuasive. Obviously, this right has been considered across the State at various meetings. Certainly some differences of opinion may or may not have been kept under wraps in this latest manifesto. The fact still remains that, publicly, the LGA is committed to fighting for the retention of the minimum rates in its full blown glory as is currently in the legislation. That is the factor that will influence the Democrats to retain the minimum rates as unamended in the legislation that will eventually control local government.

The Hon. L.H. Davis: At all costs.

The Hon. I. GILFILLAN: The Democrats are not doing any cost analyses. Our consultation is with the LGA and I have spelt out how it has communicated that to us, and that is the basis on which we will respond.

In order to achieve a better piece of legislation dealing with the rating capacity of local government it is necessary to allow for differential rating, which is included to embrace variations of uses and locality, and we will be supporting such amendments. I believe the Hon. Diana Laidlaw has amendments in place to that effect, and I indicate that the Democrats will be supporting them.

Clause 10 provides for new section 172, allowing for reversal from capital to site valuation within a reasonable time. That is another issue of some considerable concern within the LGA. The LGA feels that it is important that it retain the right, that if moving from site valuations to capital valuations, within a reasonable time a council can decide to go back. I repeat that the Democrats are not sitting as arbiters and judges as to what is right, wrong, better or worse with regard to the decisions that councils make in relation to rates or how they are going to rate ratable properties. However, we believe they have the sovereignty, and should be empowered to have the sovereignty, to make the widest range of decisions possible within the context of local government as it is embraced in South Australia. In our opinion if, after deliberation and after experience of change from site valuation to capital, a council—the duly elected members of the people—decide that it wishes to go back, it should have the power to do so.

The Hon. Diana Laidlaw: You are providing them with options and they are accountable to their electorate.

The Hon. I. GILFILLAN: Yes, that reflects very neatly the philosophy that I feel is appropriate for this Parliament with regard to local government. I do not see us as a dictatorial tier of government imposing on the local government tier specific directions as to how councils shall run their affairs. I know that that may be an over-simplification and that there may well be some justification for the Parliament and, through legislation, the Government, to keep a watching brief. I am prepared to accept in some of the clauses, when powers and extra activities are granted to local government, the Minister still having a supervisory role and, in certain cases, the power of veto. Certainly, for the time being, the Minister can fulfil a caretaker role as local government learns to deal responsibly with these extra powers.

However, I repeat that the Democrats welcome the Bill. We believe there are some splendid provisions in the legislation, large sections of which are sought very enthusiastically by local government across the board. The legislation does need some improvements which we think could come by way of amendment. There is one major sticking point and that is the minimum rates issue. However, I repeat that we believe that the Parliament should, to a large extent, keep as wide a range of options open for councils to choose what they feel is the best thing to do and give credit to the fact that a council is a properly elected body. Although councils are not a compulsorily elected body or elected by a full franchise they still are, by and large, representative of the people they work for in those areas. Therefore, through their association—the Local Government Association—we look for the reflection of what that tier of government wants. Through this Bill, I think that we are largely giving it to them. I hope that we will be able to finish with an amended Bill which gives local government the best that can be derived at this time in early 1988. I support the second reading.

The Hon. G.L. BRUCE secured the adjournment of the debate.

ELECTORAL ACT AMENDMENT BILL (No. 2)

In Committee.

(Continued from 23 February. Page 2917.)

Clause 17—'Declaration vote, how made'—reconsidered.

The Hon. C.J. SUMNER: When we debated this Bill yesterday, I asked for the opportunity to return to the Committee stage to enable me, during the intervening period,

to obtain some information on this clause so that we could debate it and have in front of us the precise information as to the situation with the Commonwealth. The initial advice that I received yesterday from the officers was that the position advocated by the Government in this clause was the same as in the Commonwealth legislation; that is, that the postmarked date and time was no longer a relevant factor in the admission of a vote. That is not the Commonwealth position and I will now outline it, as I understand it, following advice from the officers.

It is important to listen to this explanation carefully. If the declaration envelope is postmarked after polling day, the vote is rejected even if it was witnessed on or before polling day. Effectively, this disfranchises those electors who place their votes in the mail on Friday evening or on Saturday, as in some instances they would not be postmarked until Monday. So far so good.

The Hon. K.T. Griffin: What happens if they are posted on Friday or Saturday?

The Hon. C.J. SUMNER: If they are posted but do not have the postmark of Saturday to the close of polling, they are rejected, so they could be posted on the Friday or on the Saturday, depending on the practice of Australia Post in a particular area. I presume that in most cases a Friday posting would be all right in the metropolitan area, but that may not be the case in the country areas.

The Hon. K.T. Griffin: Up until 5 p.m. in the metropolitan area?

The Hon. C.J. SUMNER: Presumably.

The Hon. I. Gilfillan: What is the practice of Australia Post?

The Hon. C.J. SUMNER: As to when they stamp—that is Friday. Some that were posted on Friday would not be picked up, but a far greater number posted on Saturday would not be postmarked until Australia Post's normal time, possibly on the Sunday or the Monday.

The Hon. I. Gilfillan: They actually frank over the weekend, do they?

The Hon. C.J. SUMNER: They do not frank on the weekend, no.

The Hon. I. Gilfillan: They wouldn't get them franked until Monday?

The Hon. C.J. SUMNER: No, that is the point that I make. They could be posted on the Saturday and the voter could think that it would be postmarked within time but, because of Australia Post's practices, if it contained a postmark after 6 o'clock on the Saturday, the Sunday or the Monday, then the vote is rejected. That is what the Commonwealth law says and, prior to the 1985 amendments, that is what the situation was in South Australia.

The Hon. I. Gilfillan: Franked on Monday was okay, was it?

The Hon. C.J. SUMNER: No, anything after 6 o'clock on Saturday was rejected, even though it may have been posted before 6 o'clock on Saturday. That is the situation at the Commonwealth level, but with a qualification, which I think is the real problem and which indicates the gaps in the Commonwealth proposals. It really should lead us to support the Government's proposition and this is the second part of the current Commonwealth Act: if the postmark on the declaration envelope is not discernible but the witness date is on or before polling day, then the vote is accepted. This practice could effectively franchise electors who voted after polling day, which is precisely the argument which was raised yesterday in relation to the Government's proposal.

It is worth noting that, during the 1982 State election when acceptability relied on postmarks, approximately 2 400 votes were rejected because the postmarks could not be read; in other words, 2 400 voters were disfranchised really because the Australia Post postmark on their envelope was not legible.

The Hon. K.T. Griffin: How many were rejected because they were postmarked after the close of polls on polling day?

The Hon. C.J. SUMNER: We would have to clarify it, but my advice is that it was about 300. Presumably, we could find that out if it became important. The third part of the qualification in the Commonwealth Act is that, if the declaration envelope does not contain a postmark, that is, it has been hand delivered at any time within 10 days (and not seven days) after polling day, the vote is accepted if the witness date is on or before polling day. Obviously, if someone wished to abuse the system, this option would be the preferred method of doing so. Even though the Commonwealth has a postmark system, the same problems that members have identified with the Government's proposal could still occur under the Commonwealth system.

When I said that the Commonwealth has a similar system, it is not quite the same, but it is to a similar extent. The State Bill that we are now debating simply relies on the witness date and it allows delivery by hand or by post within a period of seven days after the close of the poll. There is no evidence to suggest that ballot-papers are completed after polling day and lodged within this period. An elector could attempt to sell his vote. If the election was very close and the elector thought his vote would make some difference, presumably, he could go to the candidate and say, 'I have this ballot-paper that I did not put in on the Saturday. Give me $1 000 and I will now put it in.'

The candidate would probably be an accessory to an illegal practice. The Government comes back to the position at which it started, of supporting its Bill but with the amendment which the Hon. Mr Griffin put on file to make it a serious offence involving a gaol term if an elector and an authorised witness were to fill in the required documentation after the close of polling. That clarifies the factual situation on which the Committee was unclear yesterday and, on balance, the best approach is the one that I have just indicated. There is a very small chance of abuse. On the one hand it is weighed up against properly franchising people who vote by way of declaration postal vote, 2 400 of whom were, in my view, unfairly disfranchised.

The Hon. R.I. Lucas: You don't know that.

The Hon. C.J. SUMNER: Yes, we do. In 1982, 2 400 were rejected.

The Hon. R.I. Lucas: But a good proportion of the postmarks could have been after polling day. You don't know whether they were before or after.

The Hon. C.J. SUMNER: Some of them. It is more likely that the great bulk of those 2 400 votes were posted legally. In that way one relies on the capriciousness of Australia Post's stamping system to decide whether a vote is valid, and that is the evil that the Government is trying to overcome with this Bill.

The Hon. K.T. Griffin: What is on the declaration in relation to both the voter and the witness in addition to the general instructions? Is there a requirement to have it completed before 6 p.m. on polling day or is there any expression of the seriousness of voting after the event?

The Hon. C.J. SUMNER: Not at present, but I would be quite happy to suggest an amendment to the form of the regulation to have it prominently displayed on the form that it is a serious offence with a possibility of a gaol term to complete a ballot-paper or authorise a declaration vote after the close of the poll on polling day. My response to

the honourable member's question is positive, in that the form can and should include that warning.

The Hon. K.T. GRIFFIN: We really have a problem, whichever way we turn, as I see it. In the 1985 Act, we accommodated the view of the majority of the Council, with the support of the majority in the other House, that a declaration vote can be made any time up to the close of the poll but posted or delivered to the returning officer at any time within seven days after polling day. As I indicated yesterday during the Committee stage, I overlooked the fact that there was no longer the requirement for the returning officer to give consideration to the postmark. Even if the postmark is after polling day, provided that the declaration indicates that the vote was made prior to the close of the poll and provided further that it was received within seven days after polling day, it is still a valid vote. That is what I understand to be the consequence of the majority vote in 1985 when the legislation was considered.

The option is, as the Attorney-General suggests, to allow the posting at any time up to seven days after polling and to modify the present practice to make it fairer for those whose votes may presently be excluded, if they are posted, for example, and postmarked after the event. I am inclined to the view that the Government's amendment can be supported provided that we include the penalty provisions, which are important, and provided that an undertaking is made to amend the declaration form to highlight the penalty which is likely to be imposed if a person completes a ballot-paper after closing time on polling day or is an authorised witness. That will not be perfect; I do not think any of the systems are perfect. It is open to abuse but, as the Attorney-General suggests, if anybody is determined to abuse the system now, they can do it.

The Hon. C.J. Sumner: They can do it under the Commonwealth Act.

The Hon. K.T. GRIFFIN: Yes. Subject to any other persuasive contribution to the Committee, my view is to go along with the Government's amendment but to move my original amendment, of which I gave notice on the list of amendments circulated yesterday, to insert the penal provision. I will not move it formally yet, because I want to listen to any other contribution. That is my present inclination. It gets us out of the mess and whilst it is not perfect, it is the best solution at present, short of going back to the pre-1985 Electoral Act position or even following the Commonwealth position, both of which have difficulties.

The Hon. C.J. SUMNER: The Government can tighten up the situation even further by specifically stating in the form that the elector must declare that he made the vote before the close of the poll on polling day, so it will be a specific declaration. The penalties can be included on the form or in accompanying literature, but copies of the form can be sent before it is repromulgated. The way to make it even tighter is to ensure that the elector must declare that he made the vote before the close of the poll on polling day. It may even be possible to make it tougher by saying that the authorised witness must declare similarly, that is, that the vote was cast prior to the close of the poll on polling day. That, together with the honourable member's amendment relating to penalties, should make the provision as tight as practicable.

The Hon. I. GILFILLAN: It is with some relief that the Hon. Trevor Griffin has shown his hand early in the debate because it takes us off the hook. I am relatively comfortable with the position that he is taking. I have a question which may be answered in a moment. In relation to the authorisation of a witness, are there specifications as to who can or cannot be a witness?

The Hon. C.J. SUMNER: It has always been any person who is not a candidate for an election but is over the age of 18 years. That has always been the criterion for an authorised witness for whatever purpose.

The Hon. I. Gilfillan: It does not have to be an elector?

The Hon. C.J. SUMNER: No, any person over the age of 18 years.

The Hon. I. GILFILLAN: If Parliament is concerned that the status of the person who is the authorised witness may need to be more closely prescribed, I do not think that is an impossible requirement. If anyone thinks that the penalties and what we have discussed to date about putting things on forms will prevent deliberate efforts to misuse this system, I think they are sadly misled.

An honourable member interjecting:

The Hon. I. GILFILLAN: Yes, I think we have to live with that. It also seems rather pathetic that our postal service cannot put legible dates on an envelope. I am quite happy for that to go on the record. With today's technology, if we manage to get a smudged postmark, they would fail kindergarten. I do not know whether there is any way in which envelopes that carry declaration votes can be treated more specifically so that the position could be made absolutely sure in relation to postal marks. I admit that these are ramblings, Madam Chair, but it seems to be that there is common agreement across the board and that we will get this business dealt with.

The Hon. R.I. LUCAS: Although, I might be a fly in the ointment, I am nevertheless a small one against the majority. In relation to the last point made by the Hon. Ian Gilfillan, in the longer term that matter could perhaps be explored with Australia Post, albeit perhaps a trimmer, leaner, partially privatised Australia Post. The question could be raised of a distinct envelope for declaration votes which would be treated in a separate way; an agreement with Australia Post might solve the problem. This occurs only during elections, so if a yellow or green envelope is used it will make quite clear that it contains a declaration vote and that we rely on Australia Post to apply greater care in applying the postmark. I think that would resolve most of the concerns that have been expressed. I acknowledge that it is a difficult area and that whichever way we go it will not be perfect; there will be problems on both sides.

The Committee will support the amendment that the Hon. Trevor Griffin intends to move, and I indicate my support as well. I also join with the Hon. Mr Gilfillan in indicating that it is merely a statement of the intention of the Parliament because, as the Hon. Mr Gilfillan indicated, it is unlikely to prevent those who wish to defraud the system from doing so. I would be very surprised if we saw in our lifetime successful action being taken under these provisions. However, I indicate my preparedness to support the amendment. I think the suggestions from the Hon. Trevor Griffin and the Hon. Chris Sumner in relation to the amendments to the regulations would have similar practical effect and would give some indication that persons ought to behave properly in relation to the completion of declaration votes.

In relation to the figure of 2 400 votes which was introduced by the Hon. Chris Sumner in the debate, I interjected earlier and indicated that I accepted that a good proportion of those votes would have been cast beforehand, but equally one could not say that all 2 400 had been disfranchised because a portion of them might well have been lodged after election day in the seven day period. Given that we are talking in terms of roughly four weeks for the receipt of declaration votes, even on a *pro rata* estimate about 25

per cent may have been lodged afterwards. However, that is a separate matter.

My position remains the same as I put in this Chamber in 1985. I prefer the position that we had under the State Electoral Act and not that under the Commonwealth Electoral Act, because the Attorney has identified one problem in the Commonwealth legislation that we addressed in the 1985 debate, namely, this question of delivery. However, I support the view that I put forward in 1985 that the possibility of defrauding the system is a more significant matter and that we ought to do all we can to prevent it.

The Commonwealth has chosen to continue a postmarking system in this State, and I understand that the Government Labor Party, the Liberal Party, the Democrats and the National Party nationally support in a bipartisan approach the continuation of the system, I guess having looked at the problems that we have discussed today and making the judgment that the defrauding of the system was the significant matter that they ought to bear in mind.

The last point that I wish to address relates to the practice outlined by the Attorney which occurs under the Commonwealth legislation. I note in particular the word 'practice', because in my view the legislation does not federally validate the practice of Electoral Commission officials. If I understand the Attorney correctly, if there is a smudged postmark they open the ballot-paper, look at the declaration date and then accept it. On a quick reading of section 200 of the Commonwealth Electoral Act—relating to a preliminary scrutiny of postal ballot-papers—I am intrigued to know how that practice eventuated. I dare say that the matter will be explored further only when we come to a court of disputed returns. I make the point that if that is the practice of the Commonwealth Electoral Commission officials—and I understand from my discussions this morning that if a postmarking provision was to be adopted in the State Electoral Act it might be a similar practice for State Electoral Commission officials—one would not be talking in terms of 2 400 votes being disfranchised.

If I understand what the Attorney is saying, and what the State officials may well have contended with, most of those smudged postmarks would have been accepted if the declaration votes had been completed beforehand. I think that the substantive new evidence introduced into the debate by the Attorney is this figure of 2 400 persons being disfranchised. At the same time, however, he indicated that the Commonwealth practice—and I understand that the State officials intended to follow that practice—is that those votes would have been opened and, if dated beforehand, would have been accepted, anyway. I do not intend to take up further time of the Committee.

The Hon. C.J. Sumner: It still contains the same problem as we have in our Bill.

The Hon. R.I. LUCAS: I accept what the Attorney says as correct, and whatever we do there will still be problems. However, I was attempting to at least partially rebut the Attorney's new evidence that 2 400 persons had been disfranchised. The other part of the evidence that he introduced today was that the Commonwealth people were opening those votes, anyway.

The Hon. C.J. Sumner: That is under the Commonwealth system; the 2 400 disfranchised persons cast their votes under the State system before 1985.

The Hon. R.I. LUCAS: If we follow the Commonwealth system we would be unlikely to have 2 400 persons disfranchised in the 1989 or 1990 election. I indicate my willingness to support the Hon. Trevor Griffin's amendment and my support of a postmarking provision if we should come to debate that. If we do not do so, I have recorded my views and a preparedness to support the prospective changes in regulations for the declaration vote forms that the Attorney has indicated.

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

Page 6—
Line 11—after 'amended' insert:
(a) After line 13—Insert new word and paragraph as follows:
and
(b) by inserting after subsection (5) the following subsection:
(6) A person who—
(a) makes a declaration vote after the close of poll on polling day;
(b) when acting as an authorised witness to a declaration vote, falsely certifies that the declaration vote was made before the close of poll on polling day;,
or
(c) delivers or posts to a returning officer under subsection (2) an envelope containing a declaration vote knowing that the vote was made after the close of poll on polling day,
is guilty of an offence.
Penalty: $2 000 or imprisonment for six months, or both.

These amendments accommodate the view of all members expressed so far and, in conjunction with amendments to the regulations in respect of the declarations by voter and authorised witness, I think we have tightened it up as much as possible.

Amendments carried; clause as amended passed.

[*Sitting suspended from 6.2 to 7.45 p.m.*]

Clause 20—'Re-count'—reconsidered.

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

Page 77—
Line 30—Leave out 'subsection' and insert 'subsections'.
After line 33—Insert new subsection as follows:
(2a) In addition to the requirements of subsection (2), at any time before the declaration of the result of a House of Assembly election, the district returning officer may, if the district returning officer thinks fit, and must, if so directed by the Electoral Commissioner, conduct one or more further recounts of the ballot-papers contained in any parcel.

This amendment incorporates the mandatory requirement for a district returning officer to conduct a recount when directed to do so by the Electoral Commissioner. That provision formerly appeared in section 79 (2) of the Act, which was amended by clause 20 of this Bill. This issue was raised by the Hon. Mr Lucas yesterday, and he queried whether or not the Electoral Commissioner could direct a district returning officer to have a recount. I felt that he probably could, but this clarifies the position and means that now there will be one official recount for every House of Assembly seat, and then such others as are determined by the district returning officer or such others as directed by the Electoral Commissioner.

Amendments carried; clause as amended passed.

Clause 23—'Prohibition of canvassing near polling booths'—reconsidered.

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

Page 8, line 8—After '*(a)*' insert 'except in the case of subsection (1) *(e)*—'.

This clause not only deals with distance from the entrance to a polling booth at which canvassing may occur but, by virtue of paragraph *(b)*, it seeks to provide that all the constraints which apply to a polling booth should also apply to a declared institution at which votes are being taken by an electoral visitor and at any other place where voting papers are being issued. Section 125 (1) provides:

When a polling booth is opened for polling a person shall not canvass for votes, solicit the vote of any elector, induce an elector not to vote for a particular candidate, induce an elector not to vote at the election, or exhibit a notice or sign other than an official notice relating to the election at an entrance of or within

the polling booth or in any public or private place within six metres of an entrance to the booth.

The amendment is to provide that where these matters are related to a declared institution at which votes are being taken by an electoral visitor, paragraph *(e)*, relating to the distribution of a notice or sign other than an official notice relating to an election, should not apply. The reason is that when declaring a place such as one of the major hospitals an institution, as I understand it, that declaration applies not just to the building but to the extent of the boundaries of the land on which that building is situated. It is quite possible that in a large institution there will be signs on the staff notice board or the public notice board, or somewhere on the grounds, which relate to the election, and they may not be official notices. In those circumstances it seems to me to be wrong to apply the blanket prohibition against such display, as envisaged by the amendment made in paragraph *(b)*. There may also be the situation where one of the patients or people within the declared institution, either an employee or an inmate, is a staunch Party supporter and might have a sticker up over the bed or in the room, particularly if it is a residential institution where there is both infirmary and residential accommodation.

The Hon. R.I. Lucas: He might be wearing a Mike Pratt nightie!

The Hon. K.T. GRIFFIN: He could be wearing a Mike Pratt rosette—there are all sorts of possibilities, and it seems to me to be unwise to apply the blanket prohibition, as applies in the Bill. My amendment will bring back some reason in relation to the various prohibitions. I have no difficulty with the provision concerning 'the canvassing for votes or the soliciting of any elector, or inducing an elector not to vote for a particular candidate, or inducing an elector not to vote at the election' applying to a declared institution when an electoral visitor is taking a vote, but I think including the exhibition of a notice or sign that might in fact be inadvertent is just taking it too far. I think that my amendment will adequately accommodate the problem of that blanket prohibition.

The Hon. C.J. SUMNER: The Government does not believe that that is necessary. It would create more problems than it would solve. The Opposition seems to be concerned about the proposed prohibition on erecting political notices or signs within declared institutions.

The Hon. K.T. Griffin: No, exhibiting them.

The Hon. C.J. SUMNER: Yes. It is really a matter of whether they are erecting them. These concerns are unfounded, as any room within the declared institution, for instance bedrooms, common rooms or dining rooms, could be used for the purposes of polling. In this respect, those rooms become polling booths and it would not be appropriate to allow Party-political notices within those areas.

The Hon. K.T. Griffin: Don't you declare those areas as polling areas specifically?

The Hon. C.J. SUMNER: That may happen; it depends on the circumstances.

The Hon. K.T. Griffin: They are still covered. They are still—

The Hon. C.J. SUMNER: That is right, but presumably in that case they would have to be taken down, if they were already there.

The Hon. K.T. Griffin: That can be done even under my amendment.

The Hon. C.J. SUMNER: Yes. The range of institutions or parts of institutions that may be declared for the purposes of electoral visitation includes prisons, hospitals and homes for the aged. The latter commonly contain an infirmary, a hostel and independent living units. Usually, only the infirmary and sometimes the hostel is declared for visitation. In these instances, notices and signs could be placed in the reception areas of separate administration buildings. In those circumstances where the patient or the resident is ambulatory, the whole institution is not declared; only one part of the institution is declared. Therefore, if the other parts are not declared presumably the democratic process involving the erection of signs everywhere can rage on unhindered. So where there are separate administration buildings or buildings that are separate from those within an institution that are actually declared, there is no prohibition on the erection of signs.

Further, it should be pointed out that it is not an offence to distribute leaflets to individual residents of declared institutions, as is done at present by candidates and Parties. What the Government is trying to do is outlaw the erection of posters in rooms that may be used for the taking of votes. What the Hon. Mr Griffin said about the Royal Adelaide Hospital is correct, as the entire hospital is declared for the purpose of visitation. In addition, a public polling booth is established within the grounds of that hospital. However, it would be totally impracticable to exclude portions of those grounds where candidates and Parties may display notices and signs.

Therefore, basically what we are saying is that, where an institution is declared, there should be a prohibition on the exhibition of a notice or sign relating to the election when the polling booth is open for polling. I believe that the examples given by the Hon. Mr Griffin are a little exaggerated in terms of the problems that might arise. I do not imagine that a 'Pratt for Adelaide' sticker at the end of a bed would attract any major attention.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Perhaps a two metre square 'Pratt for Adelaide' sign—

The Hon. I. Gilfillan: That is over the maximum size, isn't it? You would be in trouble to start with.

The Hon. C.J. SUMNER: That is right. A one metre square 'Pratt for Adelaide' sign above the bed of an elector in the Royal Adelaide Hospital is probably something that should not be permitted.

The Hon. R.I. Lucas: But you wouldn't allow a 'Pratt for Adelaide' sticker, no matter how small, inside the polling booth. You would view that as an offence.

The Hon. C.J. SUMNER: Because we have removed reference to declared institutions from the prohibitions under section 125, we should not allow people to plaster one metre square 'Pratt for Adelaide' signs all over the wards of the Royal Adelaide Hospital.

The Hon. M.J. Elliott: That is not a great risk.

The Hon. C.J. SUMNER: Certainly, it is not a great risk in the future, but that would be permitted under the Hon. Mr Griffin's amendment. That is highly undesirable. As I have said, there is not a prohibition on the distribution of leaflets, and the like, and we believe that the Government amendment which applies to section 125 to declared institutions in all respects is desirable. In other words, on polling day we do not want declared institutions to carry the trappings of Party-political advertising, and I think that is fair enough.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Or on polling day, I am advised. We are really getting into the realms of a fairly theoretical debate in relation to wards of hospitals, although that may not be the case regarding individual rooms that might be declared polling booths within hospitals and other institutions.

The Hon. I. Gilfillan: Under the Bill can part of an institution be declared?

The Hon. C.J. SUMNER: Yes.

The Hon. I. Gilfillan: It doesn't have to be the whole institution.

The Hon. C.J. SUMNER: No. That does happen. There are two methods: we can declare the whole of the institution, such as the Royal Adelaide Hospital, because in that situation people are bedridden, and an ordinary polling booth is set up within the institution; secondly, in regard to a different sort of institution, such as the Helping Hand Centre, only the infirmary might be declared but there would be a separate booth as well.

The Hon. I. Gilfillan: According to my reading, it is defined clearly in the definitions clause, which refers to any part of an institution. I am quite satisfied with that.

The Hon. C.J. SUMNER: No more talk either?

The Hon. I. Gilfillan: No problem.

The Hon. C.J. SUMNER: Then I will sit down.

The Hon. R.I. LUCAS: Can the Attorney guarantee that, if this amendment goes through, if someone has a 'Pratt for Adelaide' sticker, or whatever, in their individual ward in a rest home, and the electorate visitors cannot get up to a particular section of the home, that person will not be committing an offence punishable by a penalty of $500? It is fine for the Attorney-General to say that the Hon. Mr Griffin is getting theoretical, but we are looking at the practical effects of this. On the surface of this, I cannot see how the Attorney can give that guarantee, because it would appear quite obvious that if one exhibits a notice, a sign (we have talked previously about the definition of 'notice', and I think it would cover a wide range of things, for instance, a poster, a sticker, a letter, and certainly a notice or a leaflet) or any other piece of campaign material, under section 125 an offence is committed that attracts a maximum penalty up to $500.

The Attorney also said that leaflets can be circulated in declared institutions as long as those leaflets do not counsel or attempt to procure the declaration votes of two or more electors, and that is correct. However, if that leaflet or letter from a political candidate is left in a particular room, section 125 would apply. If the Attorney-General is going to give a commitment that there will be no prosecutions, or that it is not an offence and there will be no penalty, I would be interested to hear that in relation to section 125. I would guess, though, that under other provisions (and the Hon. Mr Griffin might be better placed to respond to this) political Parties, candidates or others may well lodge complaints with the Electoral Commissioner, particularly in relation to scrutineers who go from room to room and, if they lodge complaints with the Electoral Commission, I presume that they would be obliged to proceed with action under section 125.

The Hon. C.J. SUMNER: The honourable member has pointed to a rather extreme example of a situation that might occur.

The Hon. R.I. Lucas: It happens all the time.

The Hon. C.J. SUMNER: I doubt whether it would happen.

The Hon. R.I. Lucas: It has happened recently. The people in a lot of rooms you go into have leaflets from their favoured political candidates sitting by their beds or stuck up on the walls.

The Hon. C.J. SUMNER: That is not—

The Hon. R.I. Lucas: That's exhibiting a notice.

The Hon. C.J. SUMNER: I will get to that in a moment. The real point is that while chasing this rabbit to the end of its burrow, you are ignoring the fact that if we do not stick with the Government Bill 'Pratt for Adelaide' signs will be able to be festooned all over every ward in the Royal Adelaide Hospital on polling day.

The Hon. R.I. Lucas: Why not look for a compromise in the amendment?

The Hon. C.J. SUMNER: I do not think that there is a problem; that is why we are not looking for a compromise. That is the effect of the Hon. Mr Griffin's amendment, and that is what the Bill introduced by the Government, on the recommendation of the Electoral Commissioner, was trying to attack. The lawyers tell me—

The Hon. I. Gilfillan: What does that mean?

The Hon. C.J. SUMNER: The other lawyers tell me—

The Hon. R.I. Lucas: That means you do not accept that; you just say it.

The Hon. C.J. SUMNER: It means that lawyers are lawyers. The suggestion is (and I think there is some merit in it) that 'exhibit' would import into it some deliberate act of exhibition and that innocent display is not deliberate exhibition. Therefore, some element of *mens rea*—guilty intention—would be imported into the notion of exhibiting, and that, from a position of principle, should cover it.

From the point of view of practice, if there happened to be, for instance, a 'Pratt for Adelaide' pamphlet on the table next to a bed, I do not think that that would be caught by the prohibition. Indeed, if technically a 'Pratt for Adelaide' sticker is on the table next door and a little pamphlet came within it, and that is disputed by the Parliamentary Counsel, I do not think that it would give rise to a prosecution. We are trying to get away on polling day from turning declared institutions into political displays that would not be permitted in a normal polling booth. That is the principle.

The Hon. R.I. Lucas: Has it happened?

The Hon. C.J. SUMNER: I don't know whether or not it has happened. Apparently, it was not a major problem in the previous election. Pamphlets were distributed—and still will be able to be distributed under this legislation.

The Hon. R.I. Lucas: At the last State election I attended a number of booths, and there was never any evidence of people—

The Hon. C.J. SUMNER: On polling day?

The Hon. R.I. Lucas: No, prior to.

The Hon. C.J. SUMNER: Here we are talking about polling day.

The Hon. R.I. Lucas: No, when the electoral visitor visits.

The CHAIRPERSON: Order!.

The Hon. C.J. SUMNER: We are talking about when a polling booth is open for polling.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: That is right, as opposed to any time that the electoral visitor—

The Hon. I. Gilfillan interjecting:

The CHAIRPERSON: Order! I think that if people wish to have the call, they should stand up. This is not a time for conversation across the Chamber.

The Hon. C.J. SUMNER: I agree. I think that the Hon. Mr Lucas has behaved very badly about the whole matter.

The CHAIRPERSON: I think that it is my prerogative to call members to order, and I call you both to order.

The Hon. C.J. SUMNER: Hear, hear! We are trying to say that, where there is polling on or prior to polling day, the declared institution should not be turned into a centre for political campaign by the erection of signs. Unless this prohibition is inserted, the Royal Adelaide Hospital wards could contain every sign other than 'Pratt for Adelaide' signs.

The Hon. K.T. GRIFFIN: There is no problem with a polling booth, or with a room in an institution which is declared to be a polling booth, because that is already

covered by the section in the Act. There is no problem with a mobile polling booth, either. I suppose there is no problem with that part of an institution that may be declared, such as an infirmary, except that there may still be some inadvertent breaches of the prohibition against exhibiting a notice or sign relating to the election. Generally speaking, an infirmary is a place where people live, so within the infirmary people may want to erect a sign.

Even under the Government's proposal, that would be illegal and an offence, because the person would have erected the notice so that people could see it; therefore, it would have been exhibited and, technically, it would be an offence. The greatest problem occurs with declared institutions which cover more than just, say, an infirmary or part of the premises.

I have taken the Royal Adelaide Hospital as an example, because it is large, and at some place on that campus signs which relate to the election could be exhibited. Putting aside the fact that a room may be established there as a polling booth, when the electoral visitors move around the wards of Royal Adelaide Hospital, a couple of motor vehicles with signs on top saying 'Vote X for Adelaide' or 'Vote Y for Adelaide' may be parked in the car park. It could involve the ALP, the Liberals, the Democrats or anybody. A sign may be stuck on the front lawn. Patients who are ardent supporters of a particular candidate or Party and who want to erect a sign may have been hospitalised for five or six days. It may be against the regulations of the hospital and permission may not have been given. However, the fact is that that person is exhibiting a notice or sign relating to the election and an offence has occurred.

It is not highly technical: rather, it is highly practical. It is all very well to say that under those circumstances a prosecution may not occur but, under the broad provision in the Bill, it is an offence. A place like Resthaven has a lot of self-contained accommodation. The whole institution may be declared an institution and one of the residents may erect a sign outside the door. If it is erected inside, I do not think it is exhibited but, if it is outside the door, it is exhibited. That is a person's home. I think the real problem is that, if you prohibit the exhibition of a notice or sign during the period that electoral visitors take the votes, a number of breaches of the prohibition against the exhibition of a notice or sign relating to the election are likely to occur.

If one goes in my direction and exempts from the prohibition the various things that one cannot do near or in a polling booth, then a few more signs may or may not be erected. I do not think one can get away from that when one declares an institution in which people either reside or occupy for a few days, if not a few weeks or a few months. I see it as a real dilemma. I would much rather go down my track of not making it a total prohibition in relation to declared institutions on the basis that some places will be polling booths and it is covered, anyway. I do not think it matters in those institutions that are declared institutions because, if one Party has erected a poster in the foyer of Resthaven, with the permission of the management, the other Party or Parties and candidates will do the same thing.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: It is up to the supporters of candidates. However, the problem is that, if you have declared the institution, and that notice is displayed, an offence has been committed. I think it is harsh and impractical.

The Hon. R.I. LUCAS: I want to pursue the question of why we need the change in the first place. As I indicated during my earlier contribution, at the last election I scrutineered at quite a number of (not all) declared institutions. At none of the major institutions did either of the major Parties attempt to take advantage of what the Attorney-General sees as being a potential loophole in the legislation. In response to my out-of-order interjection about whether there had been any evidence—

The Hon. T.G. Roberts: Which one?

The Hon. R.I. LUCAS: The middle one—of there being a problem, based on the advice of the officers attending, the Attorney-General said, 'No, there had not.' Really, we are talking about a theoretical problem which has not occurred; there has been no evidence of its occurring at the last State election. If the Attorney-General gets involved in the day-to-day machinery matters of administration in relation to declared institutions and declaration votes, he will know that it is a very difficult task to even get himself into some of these declared institutions.

Some matrons and directors of nursing are very formidable creatures and are extremely protective of the residents, patients, or, as the Act says, inmates of these particular declared institutions. Political activity of any kind in virtually all declared institutions is greatly restricted, certainly to a greater extent than the Electoral Act outlines or was envisaged when Parliament passed it. I do not believe that the evidence shows that there is a problem so far—

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: But that is not a declared institution, is it?

Members interjecting:

The Hon. R.I. LUCAS: Because the Parties got very active at the last election and the one before that in relation to Electoral Commission offices and some Parties with more money than the Liberal Party paid people to sit there all day distributing how-to-vote cards and assorted other things outside the booth, I concede that there were some problems, but that is not what we are talking about.

The Hon. C.J. Sumner: The same thing could happen in a declared institution.

The Hon. R.I. LUCAS: But it has not happened.

The Hon. C.J. Sumner interjecting:

The CHAIRPERSON: Order!

The Hon. R.I. LUCAS: Can you rule him out of order, Ms Chair; he is becoming unruly.

The CHAIRPERSON: Order! The Hon. Mr Lucas need not take any notice of the interjections.

The Hon. R.I. LUCAS: I could not get a word in edgewise. There is a practical answer to the question. The reason major Parties do not station people outside declared institutions—

The Hon. C.J. Sumner: Inside.

The Hon. R.I. LUCAS: You have to get past the Director of Nursing or the Matron in the first place.

The Hon. C.J. Sumner: You might get one matron or director letting one Party in but not the other. That happens.

The Hon. R.I. LUCAS: Let me ask my question first, and then the Attorney can interject. It is known when electoral visitors will visit declared institutions. Arrangements are made with Electoral Commission staff and the Parties are advised of the day and can send scrutineers along. Parties do not have to worry about having people there for three weeks leading up to polling day, thrusting how-to-vote cards in people's hands. At offices of the Electoral Commission, a continual stream of people fill out declaration votes over the counter. It can occur at any hour on any day that the Electoral Commission office is open to accept declaration votes and that is why the major political Parties, in recent years, have sought to place people outside Electoral Commission offices.

We do not waste resources, time, effort or money having people sitting outside a declared institution for three weeks when we know from one telephone call to Mike Duff, Andy Becker or the district returning officer the day, the exact time and the duration—generally a couple of hours—that the electoral visitor will visit that declared institution. They are two distinct questions. There is no evidence of problems with declared institutions, and for the reasons that I have given, I do not believe that a major problem will arise. Without going through both sides of the argument, it would be preferable to return to the situation in which Electoral Commission staff or political Parties have not experienced any problems.

The Committee divided on the amendment:

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

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

Pair—Aye—The Hon. Diana Laidlaw. No—The Hon. J.R. Cornwall.

Majority of 1 for the Noes.

Amendment thus negatived.

The Hon. R.I. LUCAS: I will not prolong proceedings, but I want to test the feeling of the Chamber, particularly the Australian Democrats. I move:

Page 8—Leave out lines 8 and 9.

This will apply to any place of voting other than declared institutions, which will cover the point of the Attorney-General put on the advice of his departmental officers in relation to proceedings at Electoral Commission offices where there has been a problem, as identified by Electoral Commission staff. It deletes reference to declared institutions based on the evidence that I have given and, more importantly, on that of the Attorney-General on the advice of the Deputy Electoral Commissioner that there has been no complaint with regard to declared institutions. So, it is a simple amendment which applies to the area where there has been a problem and deletes the area where there has not been a problem.

The Hon. C.J. Sumner interjecting:

The Hon. R.I. LUCAS: No, it is a different amendment.

The Hon. C.J. Sumner: It is attempting to achieve the same objective by a different amendment.

The Hon. I. GILFILLAN: Unfortunately, I must inform the Hon. Rob Lucas that his argument has fallen on stony ground. First, I noted the very chilling winds of the Attorney's reaction across the Chamber and in those circumstances my tentative and timid curiosity about the amendment was crushed before it started. Apart from that, I do not think there is any logical justification for it. The polling booth where people formally vote is an important area, and I think it pays to be more diligent in ensuring that it is in the right environment and properly protected from gratuitous advertising. Therefore, I have no hesitation in indicating the Democrats' opposition to the amendment.

Amendment negatived; clause as amended passed.

Bill reported with amendments.

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

That the report be adopted.

I take this opportunity to make a small confession to the Council.

Members interjecting:

The PRESIDENT: I draw the Minister's attention to the fact that under Standing Orders any debate must be relevant to the motion, which is whether or not the report should be adopted and the reasons therefor. A more general comment can be given at the third reading stage.

The Hon. C.J. SUMNER: In the light of what I say members opposite may not wish to vote for that motion, so I think I should come clean. The point that I wish to clarify, so that I am not accused—as seems to have become fashionable in some quarters—of misleading the Parliament, deals with the matter we debated yesterday relating to the three-month residential period. I pointed out that a report of the Federal Parliament Joint Select Committee on Electoral Reform recommended quite firmly at pages 28 and 29 that the three-month habitation rule should be removed. I went on to say that some aspects of this report were not agreed to by all members of that committee, but I understood that this recommendation was supported by all Parties in the Federal Parliament and it had now become part of the Federal Electoral Act.

In that sense I said we were following an all Party recommendation of the Federal Parliament which had now become law. That was the information I was given at the time I made that statement. However, with an abundance of caution I asked my advisers to check the matter. It has certainly become part of the Federal Electoral Act; that is not in dispute. With respect to the Federal Parliament Joint Select Committee, I am advised that there was no specific dissent from anyone to the recommendation, but when it came before the House of Representatives Mr Blunt of the National Party moved a block of amendments which included a line to omit from the schedule of amendments that were proposed by the Government the one relating to the three month residence rule. He did not address the arguments at all and the only response that we can find in the House of Representatives was from the ALP speaker Jacobsen who outlined his reasons for supporting the deletion of the three-month residence rule.

The situation is that there are no recorded dissents from the all Party parliamentary committee recommendation. In the Parliament the National Party moved for its deletion, but this was not supported by the Government in the House of Representatives and obviously was not supported by a majority in the Senate as it found its way into legislation—that is, the abolition of the three-month residence rule.

The Hon. R.I. Lucas interjecting:

The Hon. C.J. SUMNER: If I did, I will recommit it. If he changes his mind I am happy to do that. I just wanted to make clear at this stage before we moved beyond the Committee stages for the final time that the information I gave did need correcting in one respect: that there was opposition to the deletion to the three-month rule from the National Party, which moved it, and, I assume, from the Liberal Party in the House of Representatives. However, it did pass the Parliament as a whole and there was no dissent, from what we can ascertain. My officers have ascertained that there was no dissent from the parliamentary select committee report. It is purely a matter of clarification and gives members the option—if that information I have provided is crucial to their vote—to ask me to recommit the clause.

The Hon. K.T. GRIFFIN: My views are well known on this issue. I thank the Attorney-General for drawing the attention of the Committee to the fact that the decision was not unanimous. It shows the benefit of having officers available to look up these various points, whilst that luxury is not afforded to the Opposition.

I understand from the Hon. Mr Gilfillan that it does not change his mind and, although I would dearly love to have the matter recommitted, I do not think there is any point in taking that course of action and taking up the time of

the Council further to debate the issue when the Democrats are committed to the Government's course of action. I deeply regret that because it is a matter which ought to be of concern, but obviously I do not have the numbers and therefore will not propose that it be recommitted.

The Hon. I. GILFILLAN: I want to make plain that the Democrats are not committed to the Government's course—we have made our own decision on this issue—nor are we committed to specifically follow what may have been the process of a decision being made as far as the Federal legislation is concerned. Although the Hon. Trevor Griffin may dearly wish to have the issue reopened I suspect there will be a complete repetition of the same argument. I do not think any new ingredient could come from the information that the Attorney has given us.

I would briefly like to express my appreciation to the Attorney-General for giving in his explanation to the best of his ability a full and complete description, giving the Parliament the opportunity to act on it, but I would like to make it absolutely plain that our decision not to reintroduce the matter for debate is based simply on the fact that we were convinced the decision was right regardless of who supported it in the Federal Parliament, and from what the Attorney said as far as I can see there is no alteration in the substance of the argument.

Motion carried.

Bill read a third time and passed.

JUSTICES ACT AMENDMENT BILL (No. 2)

Read a third time and passed.

CONSTITUTION ACT AMENDMENT BILL (No. 3)

Read a third time and passed.

ACTS INTERPRETATION ACT AMENDMENT BILL (No. 2)

Read a third time and passed.

LOCAL GOVERNMENT ACT AMENDMENT BILL

Adjourned debate on second reading (resumed on motion).

(Continued from page 3003.)

The Hon. T.G. ROBERTS: The revision of the Local Government Act comes at an appropriate time. Every organisation is changing to meet the changing circumstances in which they find themselves. This Bill gives local government the flexibility to do the same. The Act comprises the single largest statute in South Australia, which is widely recognised as being outmoded and outdated in relation to the needs and requirements that local government must have to act on behalf of its ratepayers and the people under its responsibility. Hopefully, the Bill will allow flexibility in decision making to enable local government come to terms with some of the problems that it faces at the moment. Many of its responsibilities are changing. Many people in local government have been frustrated with the ways in which they can come to terms with some of those problems, and the Bill recognises that situation.

Although there are one or two contentious items in the Bill, generally, a broad acceptance of the Bill has been negotiated, and now is the time to get behind the revision of the Act in the hope that local government can be brought into line with the rest of the community in the process of change and in the further hope that those people who are involved in local government can apply their minds to addressing those problems which people now find in their local communities and which have been brought on by the onset of rapid technological change and rationalisation. This relates to a lot of the problems that Australia faces nationally, in the States and in regional centres.

The revision process has been under way since 1968, and the Bannon Government, through the Minister, has now introduced two Bills, representing the major features of the future Act, and in so doing has had endless consultation and negotiations with local government. Inevitably, conflicts will arise over matters on which local government and the Minister do not agree, but if such problems are put forward to both Government and the Ministers involved in a principled way they will be addressed in a principled way. However, if they are brought forward with some sort of political mischief being the motivating factor behind their negotiation, those issues will probably meet a colder response than would have been the case had they been brought forward in a principled way for address and enlightened settlement.

I would like to think that the negotiations that have been undertaken over the past years have related not just to this Bill but to other changes to the Local Government Act, and that they have been done in a responsive and responsible way. I hope that that goodwill continues. It is difficult for local government representatives—for whom I have some sympathy—to represent their constituents who have different needs and requirements and to try to unify a general direction, with the intent of establishing legislation that can reflect widely the general views of the broadly based majority of constituents.

Local government is made up of many people with many differing points of view which must be considered by their representatives. I guess there is a certain maturity in the learning process of how to put together a case to put to Government which enhances the ability of local government to state its case and have its best position put forward, out of which such negotiations principled settlements are made. But in some cases that is not possible, and the political processes are muddied by people with an agenda that is different perhaps to that of the Local Government Association and those representing them. In some circumstances it is very difficult for the LGA to get a fix on just exactly what some of its affiliates are trying to say.

In this light, three principal issues are to be addressed in negotiations. One concerns the issue of local government autonomy. It is uninformed and inaccurate to speak of local government's independence and autonomy and to say that the status of local government across the Western world is born and developed out of statute. Some people out in the community have advanced mischievous arguments when taking back some of the messages that should be put to local government negotiating representatives.

Independent points of view have been put that perhaps local government ought to be dispensed with, in the wash of the new enlightened age of negotiations, and that local governments should take the place of the State Governments, leaving only the Federal Government, with local governments negotiating with it on the distribution of Federal funding, income and tax receipts. It is also suggested that State Governments really have no part to play in the distribution and the democratic process itself.

The Hon. R.I. Lucas: You don't agree with that, do you?

The Hon. T.G. ROBERTS: The Hon. Mr Lucas interjects and asks whether I agree with that. Of course we don't; if we did, we would not have a job. But I think that Australia has a very well developed sense of democracy. It is not perfect, but it certainly goes a long way towards reflecting the views of individuals at a local level, a State level and a Federal level. It allows those points of view to be put to the extent that problems can be addressed.

At present local government is finding that, where it has not developed a sharp feeling for the democratic process in broadening its decision-making base, many community based organisations are forming to put pressure on it to ensure that the points of view of community groups are heard. Sometimes, they bypass the democratic processes of local government and come straight to State Governments, but I am sure that, in the developing processes and the changed climate resulting from the amendments to the Local Government Act, those pressure groups within local communities will be able, hopefully through the democratic process, to approach and work with local government in a democratic way without being squeezed out or not listened to. They will be able to state their case in a well organised way and, hopefully, the maturing process of local government over the next few years will allow those organisations and individuals to have a voice and be heard.

Many local governments would say that, to have their voice heard directly, people must be elected. That is probably a valid argument, but it is also valid that those elected representatives go out and listen to a broad based section of the community, not just a sectional interest that might have been behind their election in the first instance. I believe there will be a maturing process which individuals within local government will have to face in coming to terms with the developing democratic processes that will inevitably occur in the next decade. This Bill will take us not only into the next decade but also into the decade beyond that.

Whilst purporting to grant constitutional recognition to local government, previous measure made no more than a rhetorical gesture that continued and reinforced the subordinate status of local government, that is, the reference to the previous position of autonomy. The supposedly historical amendment to the Constitution Act which applied previously, under section 64a, provides:

(1) There shall continue to be a system of local government in this State under which elected local governing bodies are constituted with such powers as the Parliament considers necessary for the better government of those areas of the State that are from time to time subject to that system of local government.

(2) The manner in which local governing bodies are constituted, and the nature and extent of their powers, functions, duties and responsibilities shall be determined by or under Acts of the Parliament from time to time in force.

Therefore, we can see that the previous statute under which the Local Government Act did not give local government the ultimate power that some people advocate it might have provided. While conservative Governments held sway, they held the same view as the Government towards local government; they did not get around to changing the status of local government when they were in power. This was a meaningless empty measure that continued the restrictive framework of the legislation from 1934 that has constrained councils. The issue, given constitutional reality, is the degree of flexibility that legislation authorises for local government. In this light, the Bill now before the Council represents the single largest broadening of potential powers ever provided for local government in the history of South Australia.

The second issue to be addressed is the powers of local government. At present, councils are restricted through the Local Government Act in endless ways, including a vast array of meaningless administrative approvals by the Minister responsible for the legislation. Questions have been asked in this Chamber about some of the more adventurous ways in which councils have gone about trying to raise revenue to meet some of their needs. Some councils have tried to come to terms with problems in their area, and have tried to be a bit progressive in the ways in which they have come to terms with those problems, only to be frustrated by the present Act. I hope that the new Act will allow for some more progressive and enlightened ways of dealing with not just revenue raising, but the responsibility for the distribution of the revenue.

Most importantly, where a council intends to meet community needs it may only expand funding for works and undertakings prescribed under section 383 of the Local Government Act. If members briefly glance at these functions they will appreciate the degree of the restrictions imposed and the timeframe in which the old Act was operating. Basically, it was the three Rs and virtually spelt out how every cent was to be spent. It had a lot to do with providing structures for people and probably served an area of development in which local government, the State and the nation found itself. We are now at a time where we have to serve people's needs and requirements as well as those that are put into the infrastructure. Members will note some of the areas referred to:

Construct, enlarge and alter sewers and works connected with sewerage; construct, enlarge and alter drains and works connected with drainage or reclamation of land; construction and purchase of tramways by horse traction, steam, electricity, petrol or other motive power; construct, purchase and erect machinery and appliances for carrying out works, undertakings and purposes which the council may lawfully carry out; provide places for the deposit of refuse, night soil and rubbish; acquire stone quarries; construct and provide sanitary conveniences and urinals.

Members can see by merely reading out some of the definitions under which councils could act that it was clearly restrictive and very definitive. It certainly did not allow for too much progressive, lateral thinking to evolve at local government level. If a councillor did put forward an idea that was slightly outside what the restrictive guidelines allowed, someone could quote back to him those restrictive powers that would rule out of order any progressive initiatives that some of those councillors would have liked to take. Consequently, a lot of people turned away from local government as a way of initiating change within the community. Perhaps service groups might have been the evolutionary answer for services not able to be provided by councils.

I guess that one could say that some of the local pressure groups that are now starting to form in local government areas are the evolutionary realities of those restrictions which councils have had to work to. Hopefully, under this Bill they may have the ability to have a lateral thinking mind and, even be able to apply the service club mentality to local government and to work to coordinate a lot of resources that exist in the community and put them together to make sure that communities are more unified and assist each other in developing some of the needs and requirements that communities have to raise not just the standard of living of individuals but also the quality of life. Perhaps it might even allow for individuals to start cooperating at a more basic level in communities in order to eliminate possible conflict.

The Government has previously, through amendment to the Act, attempted to expand the potential range of functions of councils through section 383a of the Local Government Act. The reference by the Opposition to the Thebarton Development Corporation belies the difficulties that have emerged in trying to expand local government powers within

the existing constitutional framework. Reference to some of the frustrations that the Thebarton Development Corporation went through also illustrates just how quickly the rug can be pulled out from under the feet of those people who were trying to use initiative to develop solutions to problems that have evolved. The previous Act did not consider the developing problems and programs of the 1980s, 1990s and the year 2000. I believe that the frustrations are also starting to be shown by local councillors who are trying to come to terms with some of the problems they see. I understand some of the arguments put forward by councillors who say that it is no good giving them extra responsibilities without giving them finances to carry out some of those responsibilities.

There are limits to what programs they can carry out with restricted finances, but it does not prevent lateral and progressive minds getting together to work out ways in which the finances that are available can be spent and even ways in which revenues can be raised locally to support some of the local programs that they may want to put in place from time to time. That does not mean that State Governments or Federal Governments duck out of their responsibilities in relation to finance approvals.

By the amendment to section 383a the Government demonstrated its willingness to increase local government's flexibility. The provisions in this Bill go dramatically further with the same philosophy in mind. Apart from the general powers to delegate fees and charges and numerous deletions of administrative approvals required, the most significant part of the Bill is section 196. The functions of a council are proposed to be listed in general terms allowing maximum flexibility. I alluded to this earlier in relation to having that flexibility to put into place those programs that are identified as being required by local government areas. New section 196 states:

(a) to provide for the development of its area;
(b) to provide services and facilities that benefit the area, its ratepayers and residents and those who resort to it;
(c) to protect health and treat illness;
(d) to provide for the welfare, well-being and interests of individuals and groups within the community;
(e) to represent and promote the interests of its ratepayers and residents;
(f) to establish or support organizations and programmes that benefit people in its area or local government generally;
(g) to protect the environment and improve amenity;
(h) to provide the infrastructure for industry;
(i) to attract commerce, industry and tourism;
(j) to act to benefit, improve and develop its area in other ways;
(k) to manage, improve and develop its area in other ways;

Basically, new section 196 puts into the Act a definition of what was already occurring in local government areas that have had to come to terms to survive with some of the changes that have gone on in the past 10 years, particularly, and allows for that flexibility for those programs to be put in place without restriction. Moreover, should these prove to be restrictive in any way, in future a council may undertake any additional function with the approval of the Minister. The intent of that approval and that of many other ministerial references is to enable local government to undertake functions and not to restrict it.

The potential which the Bill contains for innovation in local government has been recognised widely and most importantly by the administrators of the legislation, that is, local government professional officers through the Institute of Municipal Management and the Metropolitan Chief Executive Officers Association.

The third point which from time to time is the responsibility of Parliament to address are problems within local government. As I have stated, local government is not completely independent or autonomous but relies for its authority on the oversight of Parliament. The policy of the Government is clearly to empower local government. That does not mean, however, abrogating responsibility to deal with problems which have been identified or issues which span across the local government system.

It is in this context that Parliament has responsibility to face up to the inequities which have developed in local government rating practices. The use of the minimum rate has long been recognised as a major issue to be addressed. It is one of those issues that has had long, protracted and difficult negotiations.

A reference to the parliamentary debate in 1959 where the ceiling on the minimum rate was removed makes it clear that the intention was to ensure that councils were able to recover the administrative cost of processing rate notices. This view was reinforced by the Ligertwood committee which inquired into land tax, council rates and water rates. The 1970 report of the Local Government Act Revision Committee also reinforced the view 'that the minimum rate should not be allowed to rise to such a sum as to destroy the principle of rates based on valuation'.

Should anyone be in any doubt as to the intention in Parliament, the then Secretary of the Municipal Association (now the Local Government Association) reinforced in a letter to the *Advertiser* that in negotiations with the Government at that time 'it was never intended or desired that the concessions should be used as a revenue raiser but was purely an economic move to cover councils' cost in assessments'.

Since that time there can be no question that, whether deliberately or simply progressively over time, a substantial number of councils have used the minimum rate provisions excessively. The issue at stake is that, if not addressed in this revision, it will never be addressed. It is whether the value of property should determine local government's tax revenue or whether local government rating should end up being a poll tax arbitrarily determined. In some council areas such as Marion and Port Augusta nearly 90 per cent of all properties are on the minimum rate. To argue that the issue is a question of local government autonomy is to deny the responsibility of Parliament for this system of local government.

Quite frankly, some of the arguments that I have heard about the minimum rate are based on pure politics and they cloud the issue so that the logic of the debate around the whole structure of the new Act has been lost to a point where the minimum rate has now become the key to the acceptance or rejection of a lot of ideas within the new Bill. It has been used as a tactic to undermine the value of much of the Bill and, in some cases, I have even heard it put in a conspiratorial way where local government autonomy is being undermined by the State Government, because it is restricting local government's revenue base and not allowing councils to deal with some of the problems that they find within their areas. That is not the case at all. The case being put by the Government is to get the revenue base of local government back to a point where councils can deal effectively and consistently with a lot of the financing problems that they have within their areas and that, if other areas need to be addressed in terms of alternative revenue raising sources, then let that be done in other ways. Those matters are addressed in the Bill, also.

In summary, the flexibility given to councils through legislation should be judged on performance of the Government and the Opposition, not by rhetoric. The Bill proposes a dramatic extension of the potential functions of councils and their constituents. Parliament cannot abstain from

addressing blatant inequities which the system has developed.

I hope that the future negotiations between the Government, the Opposition and the Democrats are based on logic and not on rhetoric and that, rather than trying to win hearts and minds, the three Parties can get together and agree on a formula that can be put into place with the rest of the Act so that local governments can carry out the responsibilities demanded by their ratepayers and residents. I also hope that the revenue base of councils can be determined in a unified way so that future programs that will benefit all ratepayers and residents can be put in place. Further, I hope that it is not done in an arbitrary way that in itself is discriminatory. If one starts with a system which is discriminatory in its revenue raising attempts, then there will not be agreement upon the way in which those moneys are to be spent generally in communities. There will be tacit agreement and withdrawal to a point where full participation will not occur. Conflicts, which will arise from day one, will not allow the benefits of the Bill to be put into place so that they can flow back into the local communities.

The Hon. BARBARA WIESE (Minister of Local Government): I thank members for their contributions during this debate. I will take the opportunity to address some of the key issues in the Bill and, also, to place on record some of the history of the development of this Bill and the negotiations that have occurred during the past two years since it was first raised.

First, I can only wholeheartedly support the Hon. Ms Laidlaw's view that our objective in discussions on this Bill should be to ensure that it is passed in a form that is in the best interests of local government, not only now but well into the future. The Opposition has identified some specific provisions concerning the local government rating system which it will oppose and shortly I will comment on those matters.

I am more optimistic now than I was in December that it will be possible for this forum to resolve those specific issues, since the Opposition is at least now prepared to acknowledge the number of positive provisions incorporated in the Bill. This is certainly a more realistic and constructive attitude than was displayed by the Hon. Ms Laidlaw in her speech in December when she categorised the Bill as being an unworkable insult (based on paranoia) which had occasioned only shock and horror in local government circles. I am not sure whether the honourable member fully appreciates the extent to which in her initial response she distorted local government's attitude to this Bill, but I am happy to say that the somewhat hysterical tone of her earlier speech was not maintained when she concluded her remarks at the beginning of this session. No doubt she noticed that, even in submissions from those councils opposed to specific rating provisions, there are references to the many welcome provisions contained in the Bill.

I was very pleased to note also that the Hon. Mr Gilfillan demonstrated an appreciation of the enthusiasm that local government has for the vast majority of the provisions of the Bill. These changes include empowering councils to obtain any kind of loan or financial accommodation they think suitable, providing councils with a general power to expend their revenue as they think fit, deregulating the organisation of councils' banking and the management of councils' cash flow, and providing councils with a general power to impose fees and charges for the use of council facilities and for services supplied on request. Proposed section 196 of the Bill empowers each council, whether alone or in co-operation with others, to undertake any activity, including any commercial activity, designed to provide for the development of its area, to provide services and facilities to ratepayers and residents, to assist community groups and individuals, to improve amenity, to encourage industry, or to benefit, improve or develop the area in some other way.

These are not, as the Hon. Ms Laidlaw saw fit to call them, platitudinous handouts. They are significant changes which provide local government with a greater degree of flexibility in the management of its resources and a greater capacity to respond to local aspirations and needs. They provide local government with a new and improved charter to do what local government is best placed to do, namely, serve the local communtiy. The Hon. Diana Laidlaw does not accept that this is the case. She has devised a test against which to measure the Bill. It consists of setting up a false juxtaposition between my statement that local government is subordinate, a statement of fact, not opinion (but one which she considers negative and patronising), and an extract from a report of the Advisory Council for Inter-government Relations which she supports as a positive definition of local government.

Chapter 4 of the same report sets out six features of Australian local government which sum up its legal status. Three of these are emphasised in the quotation chosen by the honourable member: it is locally orientated, it is an elected organisation, and it is multi-functional. The remaining three features, those that the honourable member failed to mention, are described as follows: it is subordinate, not sovereign; it has both legislative and administrative functions; and it possesses power to levy taxes, even though in exercising this power it is subject to some degree of supervision or oversight.

It is not a helpful contribution to the debate to argue that these readily observable features of local government are actually different points of view. It is unfortunate that the Hon. Ms Laidlaw did not read chapter 10 of the ACIR report. It points out the problems associated with providing local government with powers which are too narrow in their scope—which this Bill goes to great lengths to avoid by expressing the powers I referred to earlier in a broad and inclusive way. It suggests that where State Government approvals are necessary they should, for administrative convenience, occur at the lowest possible level of the State Government's administrative hierarchy. The ministerial delegation power included in the Bill, which the Hon. Ms Laidlaw finds so objectionable, will make this possible.

Chapter 10 of the report contains an argument for consistency in the reasons for restricting local government independence—it does not suggest that State Government supervision is illegitimate or unnecessary. Perhaps the Opposition is not suggesting that State Government supervision is illegitimate or unnecessary, either. However, the honourable member appears at times to be making a kind of general appeal to some entirely abstract notion of local government autonomy and discretion, which is of no assistance in understanding what this Bill does or does not do. The Hon. Ian Gilfillan appears to be similarly vague in referring, in the same breath, to both autonomy for local government and the watchdog role of the State.

I am quite happy for the sincerity of the Government's commitment to provide local government with increased power and responsibility to be judged against the substantive provisions of this Bill. It is much easier to make rhetorical claims that the Bill does not provide councils with greater autonomy and flexibility and that the number of external approvals required is excessive than it is to

substantiate those claims by comparing the provisions of the Bill with the present provisions of the Act or by putting forward some clear criteria for external approval requirements. The honourable member is content to lump together a whole range of provisions which are qualified in different ways and, without examining those provisions at all, to paint a picture of councils handicapped by the need to seek ministerial approval for daily management practices. She is indignant about the torrent of paperwork which she believes will be generated by councils in their efforts to obtain a host of unnecessary approvals and consents.

The Hon. Diana Laidlaw: Have you read your correspondence from the councils?

The Hon. BARBARA WIESE: Yes, I have. Local government practitioners will recognise this scenario, because it is a fair description of what occurs under the present Act. It is a feature of the Bill that councils will no longer need to seek approvals and consents in relation to the daily management practices of councils. No longer will they be required to seek ministerial consent for such matters as the establishment of special reserve funds, the disposal of real or personal property for no valuable consideration, subscriptions to organisations furthering local government in Australia, the manner of investment of sinking funds, the carrying out of works outside the area, and expenditure on sports or other amusements on the foreshore from moneys received from foreshore licence fees.

A refinement of this argument from Opposition members is to claim that it is not the number but the significance of the ministerial approvals that has expanded. This does not stand up to scrunity, either. The provisions of the present Act, especially those which prescribe that ministerial approval is required for schemes for the development of land, for schemes proposing that works or services be provided with the financial assistance of the council, and for activities not authorised by the Act, together virtually ensure that any large innovative project is currently referred to me. Under this Bill such projects need generally only be referred to the Minister if substantial financial risk is involved—risk of a degree which, should the project fail, would result in hardship for present or future ratepayers and, more than likely, an appeal to the State Government for assistance.

This stance of Opposition Members in relation to external approval powers is based largely on a document entitled 'Comments on the Local Government Act Amendment Bill, 1987', prepared by the Local Government Association when the Bill was introduced into Parliament. Subsequently, in discussions with the association about the specific issues raised in that paper, these general assertions about increased regulation and increased potential for ministerial control were reduced to a number of specific requests. The association requested, for example, that several proposals and formulas which I had intended to include in regulations be set out in the Act itself—

The Hon. Diana Laidlaw: Pity you didn't consult with them more closely earlier.

The Hon. BARBARA WIESE: I did, and I will come to that—and that additional references be made in some sections to the need for consultation with local government.

I have agreed to move amendments to accommodate those requests, some of which could have been and were not raised at an earlier stage—a much earlier stage—because many of the issues which were raised in that paper and which formed the basis of many of the comments that the Hon. Ms Laidlaw made in her speech were contained in the very first draft of the Bill that was circulated to every council in this State.

For reasons known only to the Local Government Association, those issues were never raised during the numerous meetings that were held following that consultation process. They were only raised at the eleventh hour when the Bill was introduced in the Parliament. As all interested parties now appreciate, the number of substantial objections to the Bill raised in that paper were few. It dealt largely with drafting and minor issues and was, in places, quite simply wrong.

The Hon. I. Gilfillan: Mostly sorted out at the Gilfillan conference.

The Hon. BARBARA WIESE: I will not refer to that.

The Hon. Diana Laidlaw: They should have been sorted out by the Minister earlier, though.

The Hon. BARBARA WIESE: If they had been raised with the Minister, they would have been sorted out earlier. They were not raised with the Minister because apparently they were not considered until the last minute to be issues.

The Hon. Diana Laidlaw interjecting:

The Hon. BARBARA WIESE: The honourable member is quite wrong. Many of the issues which were raised in that paper and upon which the honourable member based her contribution in this place related to issues which were in the very first draft of the Bill and which could have been raised months before but were not. I ask members to draw their own conclusions.

I wanted to say that, more particularly, had the Local Government Association not withdrawn as it did from its active involvement in the preparation of the Bill at a certain point, its confusion, which was referred to by the Hon. Mr Gilfillan, could have been avoided.

The specific, as opposed to the general, complaints raised by the Hon. Ms Laidlaw and her colleagues concern the local government rating system. Four issues are involved, and three of those are interrelated. The Bill provides for one way movement to capital values, the phasing out of the minimum rate, and differential rates based on prescribed land uses rather than criteria related to locality. These three provisions together are intended to limit the degree to which the integrity of the rating system as a whole can be undermined.

The Government believes that the argument for the use of capital values as the sole basis for local government rating is a strong one. In submissions on the discussion papers which were circulated at the commencement of this review, bodies such as the Australian Institute of Valuers and the Real Estate Institute of Australia supported the idea of making use of capital valuation uniform. The advantage of the capital valuation method stems from the fact that, unlike site value which is hypothetical when applied to any improved land, it measures something real: the current market value of the property in the state it exists. Consequently, it is the method which is best understood by the public.

Further, of the available methods, it gives the best indication of an owner's capacity to pay the tax. This was recognised by the Hon. Mr Irwin in his contribution. The vast majority of councils in South Australia do not need to be convinced of this because they already use capital values. Others have for many years used annual or site value and wish to continue to do so. The city of Adelaide uses a genuine annual value system on account of the very high proportion of rented properties in its area. In areas or parts of areas which are largely rural or unimproved, the practical differences in capital and site value are slight. The Government therefore chose, instead of legislating for the uniform use of capital values, to allow councils to continue to use whatever system they have in place at present. On the basis

of the submissions and letters I have received on the Bill, this compromise is acceptable to all but very few councils.

The Government also believes that the minimum rate should be phased out. The Hon. Ms Laidlaw agrees with the Government's analysis that the tendency for councils to set the minimum rate at increasingly higher levels and to increase the proportion of assessments upon which the rate has been levied amounts to a significant distortion of local government's principal and traditional rating system based on property values. However, the Opposition also attempts to mount a case for the exact opposite view—that the minimum rate is somehow fair because it means that all property owners contribute to the basic services and administrative costs from which everyone in the local community benefits. It is, of course, possible to argue that local government should raise revenue by means of a flat tax or a charge on each ratable property so that all property owners contribute an equal amount towards the council's functions and service. It is not possible to argue, with any degree of credibility, that local government should raise revenue from the owners of lower valued properties by requiring them to contribute a fixed amount towards the council's functions and services and at the same time raise revenue from the owners of high valued properties by means of proportional amounts based on the value of each property.

The Hon. Ms Laidlaw claims that I have failed to present a convincing case as to why the minimum rate should be discontinued. The Hon. Mr Dunn admitted that he was at a loss to understand the difference between the minimum rate and a service charge which would apply to all properties. Therefore, because there is this confusion about the issues, I plan to describe as clearly and simply as I can the problem which concerns the Government.

Where a council raises revenue by applying a rate to the valuation of land each ratepayer pays the same effective rate of tax. Where a council raises revenue by applying a rate to the valuation of some of the ratable land in its area and a minimum rate to the remainder of the ratable land in its area, those ratepayers forced to pay a minimum rate pay a higher effective rate of tax than is demanded from other ratepayers. For those properties on the minimum rate, the effective rate of tax increases as the assessed value of the property decreases. This occurs whether the minimum rate is set at $30 or $300. I seek leave to incorporate in *Hansard* a purely statistical table which demonstrates this basic point.

Leave granted.

TAXATION

(A) Valuation $	(B) Rate .007 Min. 250 $	(C) Effective Rate $ (B/A)
10 000	250	.025
20 000	250	.0125
30 000	250	.00833
31 400	250	.00796
35 700	250	.007
50 000	350	.007
60 000	420	.007

The Hon. BARBARA WIESE: The table uses as its example a council using capital value which has a rate in the dollar of .007 and a minimum rate of $250. This inequitable taxing is widespread. In a significant number of council areas more than half the properties within the council area attract the minimum rate. I also confirm for the Hon. Mr Irwin that the number of councils obtaining an increasing percentage of their revenue from minimum rating is itself increasing. In the financial year 1982-83 a total of 51 councils obtained a greater proportion of their revenue from minimum rating than they had in the previous financial year. In 1983-84 a total of 59 councils obtained a greater proportion than they had in 1982-83. I am talking about the proportion of total rate revenue being obtained through minimum rating.

For 1984-85, the figure was 62 councils, and for 1985-86 the figure has risen to 74 councils. So, one can see that the incidence has grown alarmingly during the past few years. Levying a minimum amount payable by way of rates in accordance with the present Act is a valid practice. However, it was never the intention of the minimum rate provisions to provide councils with a discretion to tax lower valued properties at significantly higher rates than higher valued properties, and I would not describe that system as a legitimate rating alternative. According to the Hon. Ms Laidlaw, the Opposition believes as a matter of principle that local government must have a variety of rating alternatives, including the minimum rate, from which it can choose the best and most appropriate rating policy for its particular circumstances. I do not believe that shifting the incidence of taxation to lower valued properties constitutes a good or appropriate rating policy for a council under any circumstances.

The third matter at issue relates to differential rates. Differential rates are, as the Hon. Mr Irwin recognised, distortions of the *ad valorem* system of rating. It is therefore important to ensure that the criteria for their application are clear and well defined. It became evident to the Government, following the consideration of submissions on the draft Bill and the development of the rates now allowed for in this Bill, that the arguments for retaining differential rating by locality were very thin. Differential rating involves the application of a rate of tax which differs according to some predetermined rules for discrimination. Asked to justify this discrimination, councils will give one of three reasons: first, perceived differences in the ability of ratepayers to pay tax; secondly, perceived differences in the benefits received by ratepayers; and, a desire to reinforce the policy decision that development should be encouraged or discouraged in a particular area.

I want to state quite clearly that the Government acknowledges that councils should have the flexibility to respond to perceived differences in ability to pay and benefit received, and should be able to use the rating system as a tool to guide development. While the valuation, particularly a capital valuation, gives the best indication of capacity to pay, it is not perfect since it measures assets rather than income.

Likewise, while all the services provided by the council, whether they are human services or services to property, improve the quality of the environment and are reflected in the value of property, that reflection may not be very precise. The argument is not about whether councils should have discretion to adjust the rate burden; it is solely about the methods which are employed.

In some cases it will be possible for councils to identify a special or particular service that is provided to one part of its area and not to the remainder. One would expect this to be reflected in the valuation of property in that area. Nevertheless, council may wish to clearly fund that service exclusively from taxes generated by that area. The new separate rate provisions contained in proposed section 175 of the Bill allow precisely for that to occur. Or a council may wish for a true user-pays principle to apply to some of the services it provides. With the exception of certain essential public-utility type services such as common effluent

drainage, it is reasonable for that principle to be applied only where the ratepayer has the opportunity to choose whether or not to make use of the service. This Bill gives councils very broad powers to levy fees and charges for the use of properties or facilities provided by the council or services supplied at a person's request, as an alternative to funding these wholly or partly from rates.

Where council wishes to respond to perceived differences in capacity to pay, it must categorise its ratepayers. Categorising them by locality assumes a uniformity of individual circumstances and land use which does not exist. Specific rate relief for individuals or groups of individuals is empowered by the Bill which allows for councils to grant rate remissions on any basis they wish. Where capacity to pay is related to the use to which the property is put, for example, rural or residential use, then it is obviously preferrable to differentiate by land use, which is what the Bill provides for. Where the aim is to foster or encourage development it is, likewise, preferable to differentiate on the basis of the actual, as opposed to the potential, use of the land and to levy a differential rate or offer a rebate on the basis of that actual use.

It is for these reasons that the Bill provides for differentiation by land use and for other specific and visible ways of redistributing the tax burden by means of separate rates, user fees and charges, remissions and rebates.

The fourth specific objection raised by the Hon. Diana Laidlaw and others is to the provision of the Bill which provides for one-way movement to a system of instalment payments for rates. Again, the Hon. Mr Irwin, who has had experience in local government, recognises that the payment of rates in a single lump sum has always been a problem. The size of the amount required means that most ratepayers must fund it from savings or borrowings rather than paying it out of current income, whereas most imposts of a similar size are able to be spread throughout the year.

Under the Bill's provisions, no Council is forced to adopt either a six-monthly or a quarterly payment system, but should it choose to do so, the Government does not believe it is reasonable for a payment system which ratepayers have become accustomed to to be chopped and changed at will.

The Hon. Diana Laidlaw: If that argument were used you would not have changed the current one.

The Hon. BARBARA WIESE: It is because councils have a responsibility to ratepayers as well a responsibility to think about their own rights—that is why. The State Government has a responsibility for both. The Government has developed this proposal along the lines suggested by councils—and members opposite should note that—so that it is operational and workable, and this compromise is acceptable to all but the same handful of councils which object to one-way movement to capital values. They are objecting on principle. The Local Government Association is supporting them on principle, and the Hon. Ms Laidlaw and her colleagues are supporting the Local Government Association as a matter of expedience. I hope that during the Committee stage we will go beyond these reflex actions and look at the responsibilities of councils to respond to the wishes of their ratepayers as well as considering their own rights in the matter.

This may prove very difficult for the Hon. Mr Davis, going on the contribution that he made during this debate. He is not at all interested in the substance of the Bill; he is interested only in mounting spurious attacks on my credibility. As he has said, the minimum rates issue is too important to be politicised—but during his contribution he did nothing else. We will see how well his hackneyed claims stand up to his own criteria of commonsense and justice.

Firstly, accordingly to the honourable member, the real reason the Government is seeking to phase out minimum rating is because it wishes to save at least $20 million a year in pensioner concessions and Housing Trust costs. In 1987, concessions to pensioners, unemployed and others by way of payment of local government rates amounted to $12 578 000 and the rates bill for the South Australian Housing Trust was some $14.5 million dollars. This gives us a total of about $27 million. The honourable member's suggestion that that figure could be reduced by $20 million by phasing out the minimum rate reveals the extent to which he concerns himself with commonsense. But perhaps I am being unfair. His precise estimate, at least that made at one stage during his contribution, was about $10 million to $20 million. We can only hope that he pays more attention to detail when he engages in his other occupation as a financial consultant when he is operating outside this place.

The Hon. I. Gilfillan interjecting:

The Hon. BARBARA WIESE: The honourable member should just wait a little while and let me deal with the facts. Trust rental properties tend to have low values. Like other owners of low valued properties, the Trust is disadvantaged by increasing levels of minimum rating. Certainly the trust is convinced that it would pay less in rates if it were rated normally on the value of its properties. It is understandably concerned that funds earmarked for public housing are being inappropriately directed into the general revenue of some councils. If anyone is getting a windfall gain here it is those councils. If one of the side effects of limiting councils' departure from the *ad valorem* rating system is to free significant amounts of taxpayers' money to put back into the public housing program as Parliament intended, then I will be delighted, as any fair-minded person in this place should be.

The Hon. C.J. Sumner: That should appeal to the Hon. Mr Gilfillan.

The Hon. BARBARA WIESE: Well, it should, yes; in fact, it should appeal to all members opposite, but it does not seem to. To suggest that this review of local government rating powers has been engineered solely so that I can give the Housing Trust a fat discount on its rates is touchingly naive. If that had been my aim, there would be a number of simpler and probably less controversial ways to do it. The trust has always paid rates and will continue to pay rates and it has the same rights as any other ratepayer to insist on equitable treatment.

Some concern has been expressed about the effect of present levels of minimum rating on the rates remission scheme available to pensioners, unemployed and others. It is obvious that, where minimum rates are set at amounts greater than $150, local government is reimbursed for the maximum concession under the scheme rather than the 60 per cent of rates payable which would otherwise apply. This means that some beneficiaries of the scheme are having to find the very sizeable amount over and above that $150 which is the product of being taxed without regard to the value of their property. And if that were not bad enough, the overall effect is that pensioner concession funds which have been set aside for the assistance of those in greatest need are being inappropriately diverted for the enhancement of councils' general funds.

The extent of this diversion is for a number of reasons not readily quantifiable except, of course, by the Hon. Mr Davis, who clearly understands little about the issue but who puts it anywhere between zero and $20 million. He and the Hon. Ms Laidlaw should get together and attempt to come up with an explanation for the remarkable phenomenon that occurs if both their arguments are accepted.

Mr Davis says that the phasing out of the minimum rate will reduce rates on homes owned by pensioners and the unemployed to the extent that the Government will make massive savings on rate concessions, while Ms Laidlaw says that the rates on homes owned by pensioners will rise to the extent that the Government's commitment to social justice must be called into question. I think the Opposition needs to get its position clear, because members opposite cannot have it both ways.

The reaction of Liberal Party members to this Bill makes one question the seriousness of their new and much vaunted concern for poverty and underprivilege in the community. I remind members opposite of their Leader's remarks about how easy it is to stand in front of a television camera and pretend to be concerned about poverty, the elderly and the unemployed. The Leader of the Opposition in another place has made a great deal of his observations about the length of the Housing Trust waiting list, but the new caring face of the Liberal Party apparently does not extend to supporting legislation that improves the situation of people who have the lowest value property assets in the community, people whose Housing Trust rentals may be unnecessarily high. According to the Liberal Party, no low income earners live in properties of low value; they have disappeared, apparently, since last August when the Liberal Party's concern for the disadvantaged was at its media peak.

As I have explained to the Hon. Mr Davis previously, the Government is far less concerned with the effects of minimum rating on its own funds than with the effects on the funds of ratepayers who are subjected to it. In the best traditions of the Liberal Party's whimsical way with figures, the Hon. Mr Davis makes a claim that does not add up and expects to be taken seriously.

The Hon. R.I. Lucas: What is your figure then?

The Hon. BARBARA WIESE: If the honourable member had been listening, he would have heard—

The Hon. R.I. Lucas interjecting:

The Hon. BARBARA WIESE: No, I have not cited a figure, because I indicated—

The Hon. R.I. Lucas: You said you would.

The Hon. BARBARA WIESE: I did not say that I would give the figure; I said 'Wait', and I pointed out to you that for a number of reasons—

Members interjecting:

The ACTING PRESIDENT (Hon. Peter Dunn): Order!

The Hon. BARBARA WIESE: —it is not possible to quantify the figure, but members of the Opposition believe that that is possible.

Members interjecting:

The ACTING PRESIDENT: Order! The Hon. Mr Lucas should cease interjecting, and the Minister should address the Chair.

The Hon. BARBARA WIESE: For a number of reasons, it is not possible. If members opposite knew anything about the rating system and the pensioner concession scheme—

Members interjecting:

The Hon. BARBARA WIESE: You would not have a clue.

Members interjecting:

The ACTING PRESIDENT: Order! I ask Opposition members to cease interjecting for the time being.

I ask the Minister to address the Chair. There will be no problems if she addresses the Chair and takes no notice of interjections.

The Hon. BARBARA WIESE: Secondly, the Hon. Mr Davis considered that the concern about the legality of the present application of the minimum rate provisions by a number of councils, to which I and other members referred, is a complete furphy. The Hon. Ms Laidlaw also suggests that, if there was any substance in my concern, the Government would take offending councils to court. Opposition members continue to remove my remarks on this question from the context in which they were made and simplistically accuse me of saying that sections 228 and 233a of the Local Government Act are illegal. That is extraordinarily irresponsible, because they know precisely what I have been talking about.

I have been very careful to avoid full-scale public debate about this matter precisely because of the advice I have received and not in spite of it. Despite what Opposition members wish to believe, it would give me no pleasure at all to see any council suffer the inconvenience and loss to local confidence that would result if rates were struck by the court. Consequently, I will say only that, although the terms of sections 228 and 233a do not impose any express limitations on the powers of councils to fix a minimum amount, an army of authority supports the proposition that the power is not unlimited. On the principles and tests that have been applied in relevant cases in South Australia and interstate in ascertaining where the limits of minimum rating powers lie, many councils in South Australia should look urgently to the question of whether or not they are exercising this power in a manner which is consistent with the Local Government Act. The cases to which I refer are *Wilkey v The Corporation of Tea Tree Gully* 1969; *Sutton v The Blue Mountains City Council* 1977; and *Falkenberg v The City of Hamilton* 1977.

The Hon. M.B. Cameron interjecting:

The Hon. BARBARA WIESE: Excuse me! If members need confirmation of the points I have been making, I invite them to contact the Local Government Association and their legal advisers.

The Hon. Ms Laidlaw referred to a number of councils as overzealous and greedy when it comes to the minimum rate which is about as insulting as it is possible to be to local government. I am not interested in punishing councils which at present receive little assistance in terms of sections 228 and 233a and which honestly might have misconstrued their powers. What I am intersted in is improving the provisions with which they have to work. Finally—

Members interjecting:

The ACTING PRESIDENT: Order! There is far too much audible conversation. We do not need interjections across the Chamber.

Members interjecting:

The ACTING PRESIDENT: I ask the Hon. Mr Davis to desist from talking across the Chamber.

The Hon. BARBARA WIESE: Finally, I must deal with what the Hon. Mr Davis considers to be his best shot—a letter from the Local Government Association stating that to the knowledge of the Secretary-General I neither sought nor obtained any information from the Local Government Association on minimum rating. I take up this matter with some distaste, because it is so totally counter-productive to reduce this debate to personalities. However, the honourable member's serious accusations really leave me little choice.

Justice is the least of his concerns when it comes to assessing my part in the discussions and negotiations on minimum rating that have taken up more than two years. Given that I have regularly met formally and informally with members of the Local Government Association throughout the whole of that period, it would indeed damn me and the association if the bald statement that there was no exchange of information on the minimum rate was true. The Hon. Ms Laidlaw—

The Hon. L.H. Davis: You asked them for information. That is what you claim.

The Hon. BARBARA WIESE: Do I have to put up with this, Mr Acting President?

The ACTING PRESIDENT: The honourable Minister has the call.

The Hon. BARBARA WIESE: The Hon. Ms Laidlaw took to task senior members of the Local Government Association executive for what she regards as their inconsistency in attempting to reach an acceptable compromise. She remarked in passing that it had been interesting to deal with the Local Government Association and that the position tended to change depending on the person to whom one spoke. I can add that the association's position on several matters had a tendency to change depending on the forum and at the worst moments it exhibited a frustrating tendency to formally return to earlier stands after compromises had been reached. The Hon. Mr Gilfillan describes this as emphatic reversion—I think that is what he called it. I believe that the Secretary-General answered the Hon. Mr Davis's query of 20 March 1987 in the spirit in which it was made and that his response was coloured by the turn which negotiations had taken by that time. For the record I would outline the events that preceded the writing of that letter.

In June 1986 the Local Government Association forwarded to me a position paper in relation to the review of the finance provisions of the Local Government Act. The association's position on minimum rates at that time was that the minimum rating provisions must be retained with the possible change of emphasis as to the purpose of applying such rates, for example, the declaration of a minimum service charge.

On 27 August 1986 the Local Government Act Review Committee met for the first time. Local government and the State Government each had three representatives on that committee. The committee's task was to review responses to the discussion papers prepared on key issues, report to me regarding areas of agreement and disagreement within the committee and to oversee the preparation of drafting instructions and a draft Bill. At its first meeting the committee had before it discussion papers and the Local Government Association's position paper.

On 3 September the association forwarded to me its response to the questionnaire which accompanied the discussion papers. In relation to minimum rating, its preferred option was to retain current minimum rate provisions. The association made some additional comments on this issue, pointing out that it had consistently pursued the principle that local government should have autonomy and flexibility in the declaration of rates. It then made the following statement:

> Whilst it was also suggested in the position paper that a change of emphasis could be considered as to the purpose of the minimum rate, for example, it be considered as a minimum service charge, the criteria which would be applied in arriving at such a charge would be difficult to define.

The Local Government Association's submission, together with—

The Hon. I. GILFILLAN: On a point of order, Mr Acting President, it is very difficult for those of us who are attemping to hear what the Minister is saying to actually hear her words.

The ACTING PRESIDENT: I suggest that, if the Attorney-General and the Leader of the Opposition wish to carry on a conversation, they should go to the back of the Chamber or out into the lobby.

The Hon. BARBARA WIESE: The Local Government Association's submission together with a summary of council and independent submissions was tabled at the review committee's second meeting which took place on 5 September 1986. At four subsequent meetings the review committee reached general agreement on all the issues involved, with the exception of the minimum rate; it oversaw drafting instructions; and it supervised the drafting of a Bill.

At the seventh meeting, which took place on 5 March 1987, negotiations broke down over the issue of the minimum rate. Association representatives on the committee decided against continuing to discuss a potential compromise because they were of the view that a better agreement could be negotiated in Parliament than might be possible in the committee, and because the association did not wish to be seen to be participating in efforts to obtain the detailed information required from councils in order to test any alternative to the minimum rates. I emphasise that last point because it is very important.

It was in that same month, I hasten to add, that the Secretary-General responded to the inquiry from the Hon. Mr Davis. Members who are able to read between the lines may be able to appreciate why I find the honourable member's allegations about my honesty rather tiresome in the light of the events that I have just described. I stand by my earlier statement as to why I altered my position on minimum rating.

It was after the breakdown of negotiations in the committee that I arranged for an independent study by the Centre for Economic Studies of the effect of one compromise proposal which had been under discussion, and that was the idea of a minimum charge based—

The Hon. L.H. Davis: Seven councils out of 126.

The Hon. BARBARA WIESE: Look, stick to things you know something about, for God's sake! The idea was a minimum charge based on the administrative costs of councils which would apply to all assessments. We wrote to all councils advising them that the introduction of a Bill would be deferred to allow councils to make submissions on the draft Bill and also to allow the consultant to report on the study.

The Hon. Mr Davis repeats the suggestion that I have never raised any argument worth considering as to why the minimum rate should be phased out. He thinks it is interesting that I do not quote from the centre's report on minimum rating. I hope that he is listening now, because I plan to quote from the executive summary. I think it is very telling.

The Hon. L.H. Davis: Are you going to tell us about the councils who support the minimum rates? Are you going to quote from council letters, to be consistent?

The ACTING PRESIDENT: Order!

The Hon. BARBARA WIESE: The report states:

> The property tax embodied in the local government rate remains the principal source of self-financing by local government (66 per cent). Other taxes, such as an income or consumption tax, are denied councils, and it is extremely unlikely that the situation will change in the foreseeable future. At present the expenditures of local government focus on improving the infrastructure of the local district—whether we identify these expenditures as 'people' related or 'property' related. In either event, they serve to improve the quality (and therefore value) of the privately owned property that goes to make up the serviced district. Thus, a rate which levies private owners in proportion to this benefit is equitable in the distribution of the tax burden.
>
> However, it can also be argued that some of the expenditure service is dissipated in the overheads of simply administering the services of local government. This cost cannot be related to differences in property value and is best apportioned across all ratepayers on an equal per-property basis.
>
> The minimum rate was originally supported in the State Legislature as a means of ensuring that all property owners contributed at least sufficient revenue to cover the minimum overhead costs of administering each assessment. This did not imply that only those subject to the minimum rate should bear the admin-

istration costs that apply to all assessments. The subsequent use of the minimum rate by nearly all councils in South Australia was in a form that levied those subject to the minimum rate for administrative overheads, but only levied those above the minimum rate in proportion to the services received. This report supports the concept of applying a constant levy to all assessments in each council area.

The Hon. L.H. Davis: How many councils support the abolition of the minimum rate? Are you going to answer that?

The Hon. BARBARA WIESE: Be quiet.

The Hon. L.H. Davis: Are you going to answer that question? It is a pretty fair question.

The Hon. BARBARA WIESE: Mr Acting President, I must have the right to deliver my speech in my way rather than listening to the inane comments of members opposite.

The ACTING PRESIDENT: That is fine. If you take no notice of them, you will get a fair hearing.

The Hon. BARBARA WIESE: From time to time, unfortunately, I do require protection from the Chair.

Members interjecting:

The ACTING PRESIDENT: Order!

The Hon. BARBARA WIESE: I will proceed with the quotation from the report. It continues as follows:

> Quite apart from the known burden of rates on those on low incomes relative to those on high incomes, the very form of the minimum rate ensures that rates as a proportion of the tax base (that is, property value) are regressive for those subject to minimum rating. That is, rate liability expressed as a percentage of property is higher for low value properties than higher value properties. However, beyond the minimum rate the liability is strictly proportional. This structure, when added to the increasing propensity for councils in general to raise the value of the minimum rate in recent years, has resulted in a disproportionate shift of rate burden onto low value properties, making for an increasingly inequitable pattern of tax incidence. Local government, like the other tiers of government, must take account of the distributional consequences of its tax policy, and a regressive pattern such as that generated by the minimum rate must be of concern to all.

In his contribution the Hon. Mr Davis said that he does not buy that. According to him, the report is invalidated because it conducts case studies on too few councils. The fact is that, in consultation with the authors of the report, the councils concerned were carefully chosen to represent a fair cross-section of all councils in South Australia. By that I mean that a good sample of rural, metropolitan, outer suburban, inner city, and provincial town and rural councils was selected so that a very good sample of all council types in this State would form part of this study. I encourage members to make themselves familiar with that report.

According to the Hon. Mr Davis, it is quite clear that the Local Government Association and the vast majority of councils do not buy the report. It is then a little curious that, in its July submission on the draft Bill, the Local Government Association stated that the levy concept was not without merit and should be an option for local government. It seems to me that the Local Government Association wants the chance to shop, if not to buy. The association also demanded unfettered minimum rating. It would have been pointless to proliferate the rating options available to local government without addressing the fundamental problem which had been identified with the use of one aspect of the rating system.

However, I note that the Hon. Mr Gilfillan has an interest in the levy concept. Contrary to the assertions of the Opposition, I maintain a good deal of confidence and faith in local government. It is for that reason that this Bill goes as far as it does down the track of deregulation of enhanced flexibility and freeing up the system so that local resources can be put to their most productive use. Equally, I recognise the continuing and important responsibilities that I as a Minister and this Parliament have for the operation of the system of local government.

I have no intention of walking away from those responsibilities, nor of ignoring real problems where they exist within the system. This Bill is the product of several years of research and discussion. But for some heat generated by a handful of provisions, it has been recognised by local government as a most significant milestone in the development of local government. It provides a firm legislative basis for more dynamic, entrepreneurial and responsible local government. It goes as far down the road of flexible government as it is responsible to go in one step. It was designed so that the remaining controls over local government discretionary functions could easily be reduced over time.

It also addresses the problems which have developed and must be addressed. I want local government to have the benefits of this Bill and to realise the maturity that it reflects. However, I will not abandon the equal need for sound and equitable practices to be observed in the exercise of local government functions. In addressing these problems, I have always sought to find solutions which recognise the various pressures on local government and to provide realistic and achievable measures. That continues to be my position.

Bill read a second time.

STAMP DUTIES ACT AMENDMENT BILL

In Committee.

(Continued from 3 December. Page 2474.)

Clause 1—'Short title.'

The Hon. C.J. SUMNER: I take this opportunity to answer a number of queries raised by the Hon. Mr Griffin. He wanted me to indicate specifically what estimates of gain or revenue forgone might be anticipated in a full year from the operation of this Bill. As the provisions will, in part, relate to instruments which are not currently presented for stamping, it is difficult to predict with any certainty an estimate of the revenue gained. Information obtained by the State Taxation Office is that, consistently, instruments are either not presented for stamping or drawn in such a way as not to attract stamp duty under existing legislation. The Premier has stated that the gain is less than $10 million and might not be much above $1 million, but that is probably not specific enough for the honourable member. The Government is not sure what the revenue gain might be because it is not sure about the number of documents that will now be roped into the system by these amendments.

The second question of the Hon. Mr Griffin concerned section 5b, which provides that duties shall be chargeable in respect of an instrument that is outside South Australia, and that is a very broad provision with extraterritorial application. The amendment has been drawn in a manner consistent with the Stamp Duties Act where provisions in general are not specifically limited to property in South Australia. However, as a matter of general practice in the various States, including South Australia, stamp duty is only levied on the proportion of property in that particular State.

The Hon. Mr Griffin queried whether that means that, if there are two parties to an instrument, one being in South Australia, and it is executed in South Australia and is sent interstate to another party and is executed there, an offence will be committed in some circumstances; for example, if the interstate party refuses to deliver the document back to South Australia. As the Hon. Mr Griffin said, many docu-

ments are executed outside South Australia which never come within the boundaries of the State. The practical approach is that the document is not regarded as being executed until signed by both parties; that is, the two month period would commence from the date when the interstate party executed the document. Some responsibility must rest with the parties to ensure that the instrument is stamped. The proposed amendment gives protection to a party which delivered an instrument to another party in the reasonable expectation that it would be stamped.

The Hon. Mr Griffin queried the maximum penalty of $10 000, which applies to a 20c duty stamp, a $4 duty stamp or stamp duty of $5 000. As the honourable member would know, these sort of factors are taken into account in situations in deciding whether to exercise the discretion to prosecute both in relation to taxation offences and other offences. Courts face this situation all the time. It is for the courts to decide, first, whether an offence is committed and, secondly, the amount of penalty which is appropriate in respect of the breach. Given that we are dealing with breaches that are potentially very serious and involve large sums of money, a maximum penalty of $10 000 does not seem to be unreasonable.

The Hon. Mr Griffin queried the use of the expression 'duly stamped'. It is not accepted that that expression has the meaning attributed to it by the Taxation Institute. Under section 22, which provides that an instrument is not available to be used at law until duly stamped, a document does not have to be submitted for an opinion for it to fall within the category of being duly stamped. Discussions with the Taxation Institute indicate that not only is there a divergence of opinion between its comments and State taxation advice, but also between taxation practitioners. The Hon. Mr Griffin suggested that it is unusual for instruments liable for duty to be delivered into the possession of some other party to the instrument.

The Hon. K.T. Griffin: It is a question of the obligation. It is one of the defences under clause 3 that the instrument was delivered into the possession of some other party to the instrument in the reasonable expectation that the other party would have it stamped. It also states that the defendant is not the party who would customarily assume responsibility for stamping the instrument. It is in the area of defences.

The Hon. C.J. SUMNER: Well, in any case, after discussion with the Taxation Institute, an amendment will be proposed which is intended to relieve this criticism by providing a defence where the instrument has been delivered in the reasonable expectation that the other party would have it stamped. That overcomes the query raised by the honourable member.

The Hon. Mr Griffin was concerned that there should be the inclusion of a specific provision to allow the Commissioner to grant an extension of time in the period during which a document can be lodged prior to the commencement of an offence. Such a provision would be inconsistent with the rest of taxation legislation and with similar provisions introduced interstate, particularly in New South Wales and Western Australia. The honourable member stated that it is arguable that an instrument is tainted with illegality and is therefore unenforceable if it is not stamped within the required period. Section 20(1a) provides that it can be stamped outside the required period and the effect of section 22 is that once the late stamping penalty is paid, the instrument would be able to be used in court.

Another query is the statement that it would be wrong if the legislation had a retrospective effect. As is stated by the Taxation Institute, criminal offences are not given a retrospective effect by the courts. Nevertheless, the amendment modifies section 3 to come into operation two months after assent and also provides that it does not apply to any instrument executed or brought into existence before 7 December 1987.

The next query from the honourable member is a general one which he has raised in relation to other Bills and that is the question of what the Hon. Mr Griffin alleges is a reverse onus provision in relation to the liability of directors of a body corporate. The proposed offence providing for liability of directors is consistent with recent State taxation legislation: the Financial Institutions Duty Act 1983, section 61; the Tobacco Products Licensing Act 1986, section 31, and other non-taxation legislation. This matter has been debated a number of times in this Chamber and I think the Chamber has generally recognised that there needs to be a provision of this kind.

The next comment from the Hon. Mr Griffin is in reference to the rate of interest, as follows:

> I should say right from the start I do not find that particularly satisfactory so I would like to see some amendment to tidy up the rate of interest which might be paid to a taxpayer on a refund of duties.

The determination of a rate that from time to time reflecting the current situation is seen to be most practical.

The honourable member then raises some questions relating to objections and appeals. The Taxation Institute has submitted a proposal covering a wide range of matters and is similar to a submission prepared for Western Australia. The proposal is to adopt a standard procedure across all State Taxation Acts and some consistency between States. To date these matters have not be adequately reviewed by the Government, but the payment as interest is seen as one issue which should be readily addressed. This Bill was not intended to cover the wider issues of appeals and objections. It is suggested that these appeal provisions should be considered as a separate issue and any attempt to substantially modify the procedures relating to objections and appeals in one enactment without consideration of the impact on the whole range of State taxation legislation would in fact be contrary to the proposal put forward by the honourable member.

The honourable member suggested that the clauses in the Bill were an over-reaction to the Supreme Court decision in the Softcorp Holdings case. A simple example of its unfairness was quoted relating to real estate acquired by a parent as trustee. The Government proposes to move an amendment whereby, in lieu of the approach in the Bill to introduce a system of credits, there is a new approach to limit the operation of subsection (5) *(e)* to cases where *ad valorem* duty has already been paid or where the transferor obtained his or her interest under another paragraph of subsection (5).

The honourable member then raised situations where a simple beneficial interest in property arises under an instrument that is duly stamped where hitherto it has been the ordinary and reasonable expectation in the community that there should be no double duty payable. That problem will also be covered by the amendment I have outlined. He then stated that the commissioner may assess *ad valorem* duty under section 15a on the value of the property.

The Hon. K.T. Griffin: That relates to the credit that might be given in assessing *ad valorem* duties under the present provision in the Bill, but as I interpret the amendments that are on file, they very largely—

The Hon. C.J. SUMNER: That is right; the problem is met by the amendment. The Hon. Mr Griffin said that he felt there may well be some difficulty in defining 'matrimonial home' as being limited to residential premises that

constitute the principal place of residence but not including premises that form part of industrial or commercial premises.

This is consistent with the wording of the current First Home Concession scheme (section 71c). These fact situations have been dealt with consistently under that legislation. Where the premises are characterised as residential premises, they would be eligible for the concession.

The next query relates to the situation where the farmer's residential premises are attached to farming land or to premises used for commercial purposes. The Hon. Mr Griffin said that he knew there were some problems in that situation, but it may be appropriate to consider apportionment in those circumstances. This exemption would not apply to commercial premises. In the case of *Gilling v. Commissioner of Stamps* (1983 Supreme Court decision) a farm was held not to be industrial or commercial premises. It is accepted that in some cases a separate value of the 'matrimonial home' would be required in the transfer of a farming property to calculate the extent of the exemption.

The Hon. Mr Griffin said that he would like to see that period for recognition of *de facto* relationships extended to five years instead of two years. A period of two years was thought to be a reasonable period and was comparable to that adopted in NSW (Victoria has no specific period).

In relation to the transfer of various assets between members of the group, they will be required to lodge a statement under proposed new section 71e. To avoid disadvantaging businesses in this State where they engage in a group or family reconstruction of their affairs, it is suggested that there should be an exemption at least from the provisions of the proposed section 71e. Corporate reconstructions are not addressed in this Bill. The current view is that applications for concessions will be dealt with on their merits. NSW and Victoria have issued guidelines but these have not been incorporated in the legislation, other than in NSW in December 1987 authorising the Minister to give a concession at his discretion.

The honourable member's next query relates to the fact that the new section 71e is part of the current trend in stamp duty law whereby duty is levied on transactions rather than instruments. As a general comment it should be noted that this provision is not part of a general approach to levy duty on a range of transactions, but rather is a method adopted in respect of a tax avoidance scheme in relation to a specific range of documents.

The honourable member states that a section of the Bill appears to create a sales tax and/or excise. It requires a statement to be lodged on every change in the legal or equitable ownership of a business asset. The amendment on file modifies the provision to remove reference to a 'business asset'. The comments about a sales tax will no longer be relevant if the amendment is accepted.

The next query was that no definition of a business asset was provided. The response to that is that reference to a business asset is to be removed by the Government's amendment. The honourable member quoted several examples of what might be considered a 'business asset' and referred, for instance, to a consumer purchasing weekly groceries from a supermarket, etc. The amendment to which I have already referred relating to a 'business asset' will mean that this problem has been overcome.

The Hon. Mr Griffin has pointed out that there are a series of exemptions which do not exist in the proposed section 71c; that is, first, the appointment of a receiver or trustee in bankruptcy; secondly, the appointment of a liquidator; thirdly, the making of a compromise or arrangement under Part VIII of the Companies (South Australia) Code, which has been approved by the court; fourthly, the surrender of a lease; fifthly, the transfer or conveyance of any estate or interest in property as security, including the pledging or charging of property; and finally, the release or termination of an option for the purchase of property. A Government amendment has been moved to cover the examples in the first, second, third and fifth examples that the Hon. Mr Griffin has given. The fourth and sixth examples are not accepted by the Government as being valid, on the basis that an instrument dealing with them is currently liable to duty. The Bill includes a regulation-making power (section 71e (2) *(d)*), which would permit further exemptions if they could be justified.

The next query concerns hire purchase agreements and the lease of certain property, where by virtue of entering into such a lease it immediately becomes a transfer of the title. Under the Government's proposed amendments the necessity for a statement arises upon a change in the ownership of a legal or equitable interest in land or business, the goodwill of a business or an interest in a partnership. In the example cited, if that is the only transaction that is taking place, a statement will not be required to be lodged, under section 71e.

The Hon. Mr Griffin then queried that both parties to the transaction must lodge separate statements in the approved forms. The proposed section 71e requires only one statement to be lodged, and consequently double duty will not be imposed. The scheme of the South Australian legislation is different to that adopted in New South Wales and Queensland, as in South Australia, unlike New South Wales or Queensland, all parties to an instrument are liable to pay the duty, whereas this is not the case in those other States where the respective Acts specifically place liability on a specified party. The section is consistent with the scheme of the existing provisions.

The next query related to section 71e (5) where, it was stated, while seeking to avoid double duty, a series of anomalies had been created, and most of the anomalies arose out of the use of the word 'executed'. The response to that is that a modified approach is included in the Government's proposed amendments. The reference to 'execute' has been removed.

The Hon. Mr Griffin then quoted the Taxation Institute, again in dealing with certain other matters, which are not as significant as those to which he referred earlier but which he then canvassed. He referred in particular to persons who aid and abet, etc., offences and to the refund provisions. These matters were raised by the Taxation Institute and were referred to by the Hon. Mr Griffin in his contribution. Both those matters have been addressed in the proposed amendments.

In relation to the caveat provisions in clause 8, the Hon. Mr Griffin stated said that he thought that an unregistered mortgage ought to be stamped. However, investigations have shown that many are not stamped. The honourable member then asked me to clarify possible problems relating to the registration of a caveat where there was an unregistered mortgage and the requirement that the caveat be stamped.

The honourable member is concerned in the context that a caveat is a very valuable means by which an unregistered interest in real property can be protected. There should not be delays in the stamping procedure for the caveat.

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

The Hon. C.J. SUMNER: It will be necessary to stamp the caveat before registration. Discussions have been held with the Registrar-General of Lands. The Government believes that a satisfactory administrative procedure can be

determined. Currently, there is a procedure involving the Stamps Office and the Lands Titles Office to handle special situations.

The Hon. K.T. Griffin: When we come to that clause, I will raise questions about the procedure.

The Hon. C.J. SUMNER: During the Christmas recess there were considerable discussions between the Government, the Taxation Institute and, I believe, the Hon. Mr Griffin. The Government has now placed on file amendments that it believes cover the most significant issues that were raised in those discussions.

I now turn to the responses to specific questions raised by the Hon. Mr Gilfillan. First, the honourable member said that clause 2 should apply only to instruments brought into existence after this Bill is proclaimed. The response is that this, in fact, will apply.

The Hon. Mr Gilfillan said that clause 6 (4), which relates to the matrimonial home exemption was too restrictive. It is normal practice to apply concessions from the date of operation. The honourable member said that the Commissioner should have power or discretion to relieve the two-month restriction. This is not acceptable to the Government, and I have commented previously on this point. The Hon. Mr Gilfillan queried the words 'duly stamped'. As I indicated previously, the Government does not accept that the words 'duly stamped' are inappropriate. He further said that the definition of 'matrimonial home' would exclude farm homes, but a Supreme Court ruling held that a farm does not constitute industrial or commercial premises, as I have already said. Where rural properties, including a matrimonial home, are transferred, the concession will apply to the value of the home. It is not intended that the concession apply to properties other than the matrimonial home.

The honourable member's next query related to the period of cohabitation that is necessary to create a *de facto* or putative spouse situation. The Government's Bill provides a two-year period which, as I have already said, is considered to be reasonable. In these circumstances a five-year period as suggested, which applies under the Family Relationships Act in South Australia, is more restrictive than that which applies in New South Wales and Victoria. The Hon. Mr Gilfillan said that land will be caught up. I point out that the legislation was drafted in this form for completeness. Where land is transferred in the normal course of business a stamped document on which *ad valorem* stamp duty is required applies. Therefore, no statement will be required.

I have already dealt with the question of 'business asset' and 'double duty'. That situation will be met by Government amendment. The honourable member said that clause 6 provides that each party is guilty of an offence. I have already responded that this is consistent with stamp duty legislation where both parties executing an instrument are liable. In relation to the Softcorp matter, the Hon. Mr Gilfillan said that it is better to outlaw the technique used rather than to have the suggested Government clause embrace too wide an ambit. As I have already indicated, an alternative approach has been adopted in a proposed Government amendment. I believe that I answered other queries earlier in my reply.

The Hon. K.T. GRIFFIN: I thank the Attorney for putting on the record a number of responses to issues that I raised in the second reading stage. Members will recall that prior to the Christmas recess a number of these issues were raised and it was informally agreed that the Bill go to the Committee stage and that detailed responses could be given at the commencement of that stage. I appreciate what the Attorney-General has done. In considering the clauses I will raise a number of matters by way of question as well as by debating specific amendments that the Government and I have on file.

There has been much discussion, more so between the Taxation Institute and Government officers, over the Christmas/New Year period and until the present time. The extent of the accommodations that have been reached is evidenced by the range of Government amendments which have been placed on file and which quite substantially alter the thrust of the legislation. In general terms, I believe that they eliminate many of the problems which I raised in the second reading stage and which were raised by the Taxation Institute, accountants and lawyers.

Therefore, to that extent the period of consideration has been of advantage, and I would like to commend all those parties who have been involved, particularly the Taxation Institute, the members of which have been engaged in consultation on this matter without fee or reward. I believe that is a generous contribution to ensuring that the legislation is more appropriate and does not have any unintended consequences. I thank the Attorney for what he has said so far, and I indicate that I will raise other matters on individual clauses.

Clause passed.

Clause 2—"Commencement."

Progress report; Committee to sit again.

SUPPLY BILL (No. 1) (1988)

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

ADJOURNMENT

At 10.52 p.m. the Council adjourned until Thursday 25 February at 2.15 p.m.