LEGISLATIVE COUNCIL

Tuesday 1 March 1988

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

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

PAPERS TABLED

The following papers were laid on the table:

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

Pursuant to Statute—

Casino Act 1983—Regulations—Casino Employees.

Land Agents, Brokers and Valuers Act 1973—Regulations—Date of Operation.

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

Pursuant to Statute—

Institute of Medical and Veterinary Science—Report, 1986-87.

Road Traffic Act 1961—Regulations—Emergency Vehicle Spotlights.

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

Pursuant to Statute—

South Australian College of Advanced Education Act 1982—By-laws—Permits and Reserved Areas.

QUESTIONS ON NOTICE

The PRESIDENT: I direct that written answers to the following questions on notice, as detailed in the schedule that I now table, be distributed and printed in *Hansard:* Nos 24, 68, 136 to 152, 159 and 160.

LANGUAGE AND MULTICULTURAL CENTRE

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

1. When will a decision be taken about the future of the Grote Street site of the Language and Multicultural Centre?

2. What is the estimated cost of restoration of the buildings on this site?

3. Has the Education Department recommended to the Minister that this site be sold?

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

1. Approximately April 1988.

2. Plans have not been prepared, nor an estimate provided, pending a decision on future use. Currently, the building is being re-roofed to prevent further building deterioration.

3. No.

LABOR DAY

68. **The Hon. K.T. GRIFFIN** (on notice) asked the Attorney-General: With respect to the 1987 Labor Day march/parade—

1. Which Government departments and agencies participated?

2. What was the cost of that participation for each department and agency?

3. What items were taken into account in calculating the cost?

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

1 and 2.

Departments and Agencies that participated in the 1987 Labor Day March/Parade	Cost of Participation $
Office of Employment and Training	652.98
Engineering and Water Supply Department	2 780.00
Highways Department	5 850.00
Department of Housing and Construction	3 886.00
Department of Marine and Harbors	138.75

3. Where relevant, items taken into account in calculating the cost included the hire of vehicles, materials used in the preparation of floats, and salaries and wages of employees.

GOVERNMENT AGENCIES

136. **The Hon. L.H. DAVIS** (on notice) asked the Attorney-General: For each Government agency which is required to present an annual report to the Minister in respect of each of the Minister's portfolios pursuant to section 8 of the Government Management and Employment Act:

1. What are or were the names of persons who are, or have been, members of the board, commission, committee, council, trust or tribunal of each Government agency in the period 1 December 1985 to 31 January 1988 by virtue of the legislative requirement to have a union representative nominated by the United Trades and Labor Council or other union body?

2. How many meetings of the board, commission, committee, council, trust or tribunal of each such Government agency were held in the period 1 December 1985 to 31 January 1988?

3. How many such meetings did each union representative attend in the period 1 December 1985 to 31 January 1988?

4. What annual fees, allowances or expenses were paid to each such union representative in the period 1 January 1987 to 31 December 1987?

The Hon. C.J. SUMNER: The time and administrative effort required to answer these questions is not warranted.

137. **The Hon. L.H. DAVIS** (on notice) asked the Minister of Health: For each Government agency which is required to present an annual report to the Minister in respect of each of the Minister's portfolios pursuant to section 8 of the Government Management and Employment Act:

1. What are or were the names of persons who are, or have been, members of the board, commission, committee, council, trust or tribunal of each Government agency in the period 1 December 1985 to 31 January 1988 by virtue of the legislative requirement to have a union representative nominated by the United Trades and Labor Council or other union body?

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3. How many such meetings did each union representative attend in the period 1 December 1985 to 31 January 1988?

4. What annual fees, allowances or expenses were paid to each such union representative in the period 1 January 1987 to 31 December 1987?

The Hon. J.R. CORNWALL: The time and administrative effort required to answer these questions is not warranted.

138. **The Hon. L.H. DAVIS** (on notice) asked the Minister of Tourism: For each Government agency which is required to present an annual report to the Minister in respect of each of the Minister's portfolios pursuant to

section 8 of the Government Management and Employment Act:

1. What are or were the names of persons who are, or have been, members of the board, commission, committee, council, trust or tribunal of each Government agency in the period 1 December 1985 to 31 January 1988 by virtue of the legislative requirement to have a union representative nominated by the United Trades and Labor Council or other union body?

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3. How many such meetings did each union representative attend in the period 1 December 1985 to 31 January 1988?

4. What annual fees, allowances or expenses were paid to each such union representative in the period 1 January 1987 to 31 December 1987?

The Hon. BARBARA WIESE: The time and administrative effort required to answer these questions is not warranted.

140. **The Hon. L.H. DAVIS** (on notice) asked the Attorney-General, representing the Deputy Premier: For each Government agency which is required to present an annual report to the Minister in respect of each of the Minister's portfolios pursuant to section 8 of the Government Management and Employment Act:

1. What are or were the names of persons who are, or have been, members of the board, commission, committee, council, trust or tribunal of each Government agency in the period 1 December 1985 to 31 January 1988 by virtue of the legislative requirement to have a union representative nominated by the United Trades and Labor Council or other union body?

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3. How many such meetings did each union representative attend in the period 1 December 1985 to 31 January 1988?

4. What annual fees, allowances or expenses were paid to each such union representative in the period 1 January 1987 to 31 December 1987?

The Hon. C.J. SUMNER: The time and administrative effort required to answer these questions is not warranted.

141. **The Hon. L.H. DAVIS** (on notice) asked the Attorney-General, representing the Minister of State Development and Technology: For each Government agency which is required to present an annual report to the Minister in respect of each of the Minister's portfolios pursuant to section 8 of the Government Management and Employment Act:

1. What are or were the names of persons who are, or have been, members of the board, commission, committee, council, trust or tribunal of each Government agency in the period 1 December 1985 to 31 January 1988 by virtue of the legislative requirement to have a union representative nominated by the United Trades and Labor Council or other union body?

2. How many meetings of the board, commission, committee, council, trust or tribunal of each such Government agency were held in the period 1 December 1985 to 31 January 1988?

3. How many such meetings did each union representative attend in the period 1 December 1985 to 31 January 1988?

4. What annual fees, allowances or expenses were paid to each such union representative in the period 1 January 1987 to 31 December 1987?

The Hon. C.J. SUMNER: The time and administrative effort required to answer these questions is not warranted.

142. **The Hon. L.H. DAVIS** (on notice) asked the Attorney-General, representing the Minister of Labour: For each Government agency which is required to present an annual report to the Minister in respect of each of the Minister's portfolios pursuant to section 8 of the Government Management and Employment Act:

1. What are or were the names of persons who are, or have been, members of the board, commission, committee, council, trust or tribunal of each Government agency in the period 1 December 1985 to 31 January 1988 by virtue of the legislative requirement to have a union representative nominated by the United Trades and Labor Council or other union body?

2. How many meetings of the board, commission, committee, council, trust or tribunal of each such Government agency were held in the period 1 December 1985 to 31 January 1988?

3. How many such meetings did each union representative attend in the period 1 December 1985 to 31 January 1988?

4. What annual fees, allowances or expenses were paid to each such union representative in the period 1 January 1987 to 31 December 1987?

The Hon. C.J. SUMNER: The time and administrative effort required to answer these questions is not warranted.

143. **The Hon. L.H. DAVIS** (on notice) asked the Minister of Health, representing the Minister for Environment and Planning: For each Government agency which is required to present an annual report to the Minister in respect of each of the Minister's portfolios pursuant to section 8 of the Government Management and Employment Act:

1. What are or were the names of persons who are, or have been, members of the board, commission, committee, council, trust or tribunal of each Government agency in the period 1 December 1985 to 31 January 1988 by virtue of the legislative requirement to have a union representative nominated by the United Trades and Labor Council or other union body?

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3. How many such meetings did each union representative attend in the period 1 December 1985 to 31 January 1988?

4. What annual fees, allowances or expenses were paid to each such union representative in the period 1 January 1987 to 31 December 1987?

The Hon. J.R. CORNWALL: The time and administrative effort required to answer these questions is not warranted.

144. **The Hon. L.H. DAVIS** (on notice) asked the Minister of Health, representing the Minister of Transport: For each Government agency which is required to present an annual report to the Minister in respect of each of the Minister's portfolios pursuant to section 8 of the Government Management and Employment Act:

1. What are or were the names of persons who are, or have been, members of the board, commission, committee, council, trust or tribunal of each Government agency in the period 1 December 1985 to 31 January 1988 by virtue of the legislative requirement to have a union representative

nominated by the United Trades and Labor Council or other union body?

2. How many meetings of the board, commission, committee, council, trust or tribunal of each such Government agency were held in the period 1 December 1985 to 31 January 1988?

3. How many such meetings did each union representative attend in the period 1 December 1985 to 31 January 1988?

4. What annual fees, allowances or expenses were paid to each such union representative in the period 1 January 1987 to 31 December 1987?

The Hon. J.R. CORNWALL: The time and administrative effort required to answer these questions is not warranted.

145. **The Hon. L.H. DAVIS** (on notice) asked the Minister of Health, representing the Minister of Lands: For each Government agency which is required to present an annual report to the Minister in respect of each of the Minister's portfolios pursuant to section 8 of the Government Management and Employment Act:

1. What are or were the names of persons who are, or have been, members of the board, commission, committee, council, trust or tribunal of each Government agency in the period 1 December 1985 to 31 January 1988 by virtue of the legislative requirement to have a union representative nominated by the United Trades and Labor Council or other union body?

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3. How many such meetings did each union representative attend in the period 1 December 1985 to 31 January 1988?

4. What annual fees, allowances or expenses were paid to each such union representative in the period 1 January 1987 to 31 December 1987?

The Hon. J.R. CORNWALL: The time and administrative effort required to answer these questions is not warranted.

146. **The Hon. L.H. DAVIS** (on notice) asked the Minister of Health, representing the Minister of Housing and Construction: For each Government agency which is required to present an annual report to the Minister in respect of each of the Minister's portfolios pursuant to section 8 of the Government Management and Employment Act:

1. What are or were the names of persons who are, or have been, members of the board, commission, committee, council, trust or tribunal of each Government agency in the period 1 December 1985 to 31 January 1988 by virtue of the legislative requirement to have a union representative nominated by the United Trades and Labor Council or other union body?

2. How many meetings of the board, commission, committee, council, trust or tribunal of each such Government agency were held in the period 1 December 1985 to 31 January 1988?

3. How many such meetings did each union representative attend in the period 1 December 1985 to 31 January 1988?

4. What annual fees, allowances or expenses were paid to each such union representative in the period 1 January 1987 to 31 December 1987?

The Hon. J.R. CORNWALL: The time and administrative effort required to answer these questions is not warranted.

147. **The Hon. L.H. DAVIS** (on notice) asked the Minister of Health, representing the Minister of Agriculture: For each Government agency which is required to present an annual report to the Minister in respect of each of the Minister's portfolios pursuant to section 8 of the Government Management and Employment Act:

1. What are or were the names of persons who are, or have been, members of the board, commission, committee, council, trust or tribunal of each Government agency in the period 1 December 1985 to 31 January 1988 by virtue of the legislative requirement to have a union representative nominated by the United Trades and Labor Council or other union body?

2. How many meetings of the board, commission, committee, council, trust or tribunal of each such Government agency were held in the period 1 December 1985 to 31 January 1988?

3. How many such meetings did each union representative attend in the period 1 December 1985 to 31 January 1988?

4. What annual fees, allowances or expenses were paid to each such union representative in the period 1 January 1987 to 31 December 1987?

The Hon. J.R. CORNWALL: The time and administrative effort required to answer these questions is not warranted.

148. **The Hon. L.H. DAVIS** (on notice) asked the Minister of Tourism, representing the Minister for the Arts: For each Government agency which is required to present an annual report to the Minister in respect of each of the Minister's portfolios pursuant to section 8 of the Government Management and Employment Act:

1. What are or were the names of persons who are, or have been, members of the board, commission, committee, council, trust or tribunal of each Government agency in the period 1 December 1985 to 31 January 1988 by virtue of the legislative requirement to have a union representative nominated by the United Trades and Labor Council or other union body?

2. How many meetings of the board, commission, committee, council, trust or tribunal of each such Government agency were held in the period 1 December 1985 to 31 January 1988?

3. How many such meetings did each union representative attend in the period 1 December 1985 to 31 January 1988?

4. What annual fees, allowances or expenses were paid to each such union representative in the period 1 January 1987 to 31 December 1987?

The Hon. BARBARA WIESE: The time and administrative effort required to answer these questions is not warranted.

149. **The Hon. L.H. DAVIS** (on notice) asked the Minister of Tourism, representing the Minister of Employment and Further Education: For each Government agency which is required to present an annual report to the Minister in respect of each of the Minister's portfolios pursuant to section 8 of the Government Management and Employment Act:

1. What are or were the names of persons who are, or have been, members of the board, commission, committee, council, trust or tribunal of each Government agency in the period 1 December 1985 to 31 January 1988 by virtue of the legislative requirement to have a union representative nominated by the United Trades and Labor Council or other union body?

2. How many meetings of the board, commission, committee, council, trust or tribunal of each such Government

agency were held in the period 1 December 1985 to 31 January 1988?

3. How many such meetings did each union representative attend in the period 1 December 1985 to 31 January 1988?

4. What annual fees, allowances or expenses were paid to each such union representative in the period 1 January 1987 to 31 December 1987?

The Hon. BARBARA WIESE: The time and administrative effort required to answer these questions is not warranted.

150. **The Hon. L.H. DAVIS** (on notice) asked the Minister of Tourism, representing the Minister of Education: For each Government agency which is required to present an annual report to the Minister in respect of each of the Minister's portfolios pursuant to section 8 of the Government Management and Employment Act:

1. What are or were the names of persons who are, or have been, members of the board, commission, committee, council, trust or tribunal of each Government agency in the period 1 December 1985 to 31 January 1988 by virtue of the legislative requirement to have a union representative nominated by the United Trades and Labor Council or other union body?

2. How many meetings of the board, commission, committee, council, trust or tribunal of each such Government agency were held in the period 1 December 1985 to 31 January 1988?

3. How many such meetings did each union representative attend in the period 1 December 1985 to 31 January 1988?

4. What annual fees, allowances or expenses were paid to each such union representative in the period 1 January 1987 to 31 December 1987?

The Hon. BARBARA WIESE: The time and administrative effort required to answer these questions is not warranted.

151. **The Hon. L.H. DAVIS** (on notice) asked the Minister of Tourism, representing the Minister of Mines and Energy: For each Government agency which is required to present an annual report to the Minister in respect of each of the Minister's portfolios pursuant to section 8 of the Government Management and Employment Act:

1. What are or were the names of persons who are, or have been, members of the board, commission, committee, council, trust or tribunal of each Government agency in the period 1 December 1985 to 31 January 1988 by virtue of the legislative requirement to have a union representative nominated by the United Trades and Labor Council or other union body?

2. How many meetings of the board, commission, committee, council, trust or tribunal of each such Government agency were held in the period 1 December 1985 to 31 January 1988?

3. How many such meetings did each union representative attend in the period 1 December 1985 to 31 January 1988?

4. What annual fees, allowances or expenses were paid to each such union representative in the period 1 January 1987 to 31 December 1987?

The Hon. BARBARA WIESE: The time and administrative effort required to answer these questions is not warranted.

152. **The Hon. L.H. DAVIS** (on notice) asked the Minister of Tourism, representing the Minister of Marine: For each Government agency which is required to present an annual report to the Minister in respect of each of the Minister's portfolios pursuant to section 8 of the Government Management and Employment Act:

1. What are or were the names of persons who are, or have been, members of the board, commission, committee, council, trust or tribunal of each Government agency in the period 1 December 1985 to 31 January 1988 by virtue of the legislative requirement to have a union representative nominated by the United Trades and Labor Council or other union body?

2. How many meetings of the board, commission, committee, council, trust or tribunal of each such Government agency were held in the period 1 December 1985 to 31 January 1988?

3. How many such meetings did each union representative attend in the period 1 December 1985 to 31 January 1988?

4. What annual fees, allowances or expenses were paid to each such union representative in the period 1 January 1987 to 31 December 1987?

The Hon. BARBARA WIESE: The time and administrative effort required to answer these questions is not warranted.

SOCIAL JUSTICE UNIT

159. **The Hon. DIANA LAIDLAW** (on notice) asked the Attorney-General: In respect of the Premier's announcement on 30 August 1987 that a four member Social Justice Unit would be established in the Department of Premier and Cabinet—

1. Who has been appointed to the unit and what are the specific areas of expertise of each person?

2. What is the budget allocation for the unit?

3. What are the unit's terms of reference?

4. What priorities has the unit established for 1988?

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

1. *(a)* Director—Ms M.S. Fallon: extensive background in public administration, employment and training, community development and local government.

(b) Project Officer—Ms D. Foy: experience in the areas of health, education and youth affairs and community welfare. Previously executive officer to the poverty task force.

(c) Project Officer—Mr A. O'Connor: formerly of the ABS, a statistician with particular expertise in the housing area.

(d) Clerical Officer—Ms D. Davey: experience encompasses the Women's Advisory Unit, and a range of Aboriginal community organisations.

2. In 1987-88 the unit's budget allocation is $187 136.

3. The unit has been established to undertake the following tasks:

(1) the preparation of information on social justice and the social justice strategy for Government agencies and the community;

(2) review and assessment of Government policies and practices;

(3) initiating cross-portfolio action with regard to identified target groups;

(4) new initiatives proposed in the social justice strategy, approved in March 1986;

(5) mechanisms for incorporating public consultation and building public support.

4. The unit's priorities for 1988 are:

(1) Further establishment of implementation processes within Government, including cross-portfolio coordination.

(2) Aboriginal issues.
(3) Housing issues.

SOCIAL JUSTICE ADVISORY COMMITTEE

160. **The Hon. DIANA LAIDLAW** (on notice) asked the Attorney-General: In respect of the Premier's announcement on 30 August 1987 that a Social Justice Advisory Committee would be set up as part of the Government's social justice strategy:

1. Who has been appointed to the committee and which area of interest does each represent?
2. Who chairs the committee?
3. What are the committee's terms of reference?
4. How often is the committee schedule to meet?
5. Has the committee met and what was the agenda on each occasion?
6. Who is responsible for setting each agenda—the Chairman or the Minister of Community Welfare?

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

1. Ms M. Hunter—SACOSS
Mr M. Holdcroft—Unions
Ms R. Sharpe—Community
Mr R. Wood—Commerce
Ms R. Prescott—Community services/health (Commonwealth) observer status
Dr F. Baume—Community—Health
Mr P. Edwards—Housing
Mr K. Kelly—Justice agencies
Ms C. Bennetts—Community
Mr G. Pratz—Ethnic community
Ms A. Smith—Community—counselling
Mr B. Whyatt—Churches
Mr F. Althuizen—Community welfare (State)
Ms A. Pengelly—Ministerial Adviser to the Minister for Community Welfare
Mr G. Bethune—Treasury (State)
Ms J. Koolmatrie—Aboriginal community
Mr P. Hall—Local government
Ms M. Fallon—Social Justice Unit

2. Dr L. Ryan, Reader in Women's Studies, Flinders University.

3. (1) To stimulate and encourage public awareness and understanding of social justice issues; and
(2) To identify and advise on particular areas or groups within the community who are experiencing poverty and disadvantage; and
(3) To propose specific areas where strategic action might usefully be directed.
In addition, it will be expected to report or comment on specific issues referred to it from time to time by the Premier and Cabinet. A major objective will be to provide a means for community input to the strategy and ensure that implementation proceeds according to defined community needs and requirements. It will be expected to monitor progress and report on a regular basis to the Human Services Committee of Cabinet.

4. Monthly.

5. The advisory committee has met on four occasions. Agendas to date have focused on defining the issues regarded as priority areas for action.

6. The Chairperson, Dr Ryan.

OPTICIANS ACT AMENDMENT BILL (No. 2)

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

That the select committee on the Bill be revived for the purpose of taking evidence; that it consist of the Hons G.L. Bruce, J.C. Burdett, M.B. Cameron, J. R. Cornwall, M.J. Elliott, and T.G. Roberts; that the quorum of members necessary to be present at all meetings be fixed at four members; that Standing Order 389 be so far suspended as to enable the Chairperson to have a deliberative vote only; and that the committee have power to send for persons, papers and records, to adjourn from place to place and to report on Tuesday 22 March.

Motion carried.

QUESTIONS

ASIAN PATIENTS

The Hon. M.B. CAMERON: I seek leave to make a statement before asking the Minister of Health a question about Asian patients receiving treatment in South Australian hospitals.

Leave granted.

The Hon. M.B. CAMERON: I refer to an article in today's *Advertiser* which says:

Public and private hospitals in South Australia look set to introduce an innovative new health service industry by attracting wealthy Asian patients to Adelaide to pay by cash or card for non-urgent surgery.

The article goes on to explain that patients would be offered specialty packages, including general medical and surgical procedures commonly performed in the public and private sectors. It quotes the Royal Adelaide Hospital's Chief Executive Officer (Dr Brendon Kearney) as saying that overseas patients would not be operated on in a public hospital where there was a waiting list for that procedure. Dr Kearney went on to say that 'attractive packages' would be offered to wealthy patients—many of whom now travel to the United States or the United Kingdom—for surgery such as craniofacial, cardiac, orthopaedic, plastic surgery, neurosurgery, eye surgery and *in vitro* fertilisation.

The Opposition acknowledges that we live in a shrinking world and that Australia has a valuable part to play in both developing trade with Asia and assisting the development of countries in that region. At the same time, valuable trade links are perhaps likely to be forged out of such schemes. I see no immediate problem with such a scheme being offered in private hospitals. Changes to the Medicare system 12 months ago resulted in a dramatic decrease in the use of private hospitals and placed an increased burden on public hospitals, and that is perhaps something that the Federal Government should look at. The changes have raised occupancy levels in public hospitals but have also added to the already acute waiting list problem experienced by public patients—particularly pensioners—wanting surgery in the major hospitals.

What concerns me about this Asian patient proposal is that these overseas patients might disadvantage local public patients who have already been waiting extremely long periods of time for non-elective surgery. There are still more than 6 000 people on non-elective waiting lists in South Australia, and the list at the RAH—where Dr Kearney informs us the hospital expects to treat some of these patients from July—still numbers in excess of 2 600. My office is contacted constantly by patients who have had surgery cancelled at the last minute—both at the RAH and other major hospitals—simply because there are not enough beds.

Only this morning I was told of a very distressed woman from Prospect who had had surgery cancelled just 10 minutes before entering the operating theatre at Modbury. She had received pre-medication prior to going into surgery at the Modbury Hospital but was told the operation had been called off due to an emergency. This woman has been waiting for 10 months for knee surgery and has now been told that she will have to wait another five months before she will be seen again. When she attempted to have the surgery transferred to the Royal Adelaide Hospital, she was told that a similar wait exists there. With bed occupancy levels at all of Adelaide's major hospitals running at a very high level (probably from 85 to 90 per cent), and the daily levels at some hospitals reaching 99 per cent at times, it is questionable that there is any spare capacity to take overseas patients.

The other factor to be considered is that presumably these overseas patients will have to book in advance for operations. One could not operate on the basis of ringing today to come in tomorrow. If that is the case and, if six months down the track there is over-capacity demand for surgery on a particular day at a public hospital and there is a choice of who is to be sent home—the patient from Asia or the person from the suburbs of Adelaide (presumably the local person could be sent home for a month or two)—I wonder whether the Asian patient will be sent home after travelling thousands of kilometres to Adelaide for surgery or whether the local person will be told that he or she cannot have surgery on that day. The answer is fairly obvious: there would be a tendency, for clear reasons, to favour the person who spent all that money getting here. My questions are:

1. How many non-elective surgery operations have been cancelled at the Royal Adelaide Hospital, the Queen Elizabeth Hospital, the Flinders Medical Centre and Modbury Hospital during the past six months because of emergencies and/or the non-availability of beds?

2. What types of surgical procedures at any of the above hospitals would be carried out under this Asian patient scheme but would not affect present non-elective surgery waiting lists?

3. Will the Minister indicate the annual limits that will be placed on numbers of these patients admitted into South Australian public hospitals for surgery under the scheme proposed in the *Advertiser* today?

4. What steps can the Minister take to ensure that local patients will not be prejudiced in a case where a choice has to be made between cancelling surgery on an overseas patient and a local person?

The Hon. J.R. CORNWALL: As I said the other day, the Hon. Mr Cameron is entirely predictable and this was always going to be the first question of today. At the outset, let me say quite unequivocally, if this scheme is introduced—and at the moment it has not been presented to me or Cabinet; it has no Government imprimatur whatsoever—no South Australian patient will miss out on a bed because of overseas patients. Unless it can be clearly demonstrated that that is the case the scheme will not proceed.

The story which appeared in this morning's *Advertiser* I understand was sourced from Canberra and in a sense (perhaps not in a sense, it was literally) it was quite premature. The possibility of exporting our excellence in medical science was canvassed with me many months ago. At the time the matter was being handled by officers of the Department of State Development and it was proposed to use SAGRIC as a vehicle. It was obvious from the initial discussions that SAGRIC did not have the expertise or the feel for the hospital system—or indeed for the medical profession—which was necessary to put together a package like this.

The proposal went along the following lines. I cannot give the exact number of patients, but the South-East Asian patients who seek medical and surgical treatment (in particular surgical treatment) in the United States, Europe, the United Kingdom and Japan are estimated to spend about $500 million a year. It was proposed that if, in the first instance, we were able to obtain between 1 per cent and 2 per cent of that market, even that very modest fraction would return the system $5 million to $10 million a year, and we would certainly be able to do it as well as anyone in the world, such is the excellence of the system, particularly in the areas which have been canvassed—and I will return to those in a moment.

So, we could do it cheaper than the United States, the United Kingdom or Japan; we could do it at least as well and at a significant profit. Also, in the private sector, in the private hospitals of Adelaide, we have a very significant capacity. The private hospitals of Adelaide operate at a bed occupancy rate of about 60 per cent, so there is no question that there is a significant capacity. The question is: how might the system work? We could, for instance, contract out public patients to the private system if beds in the public hospitals were occupied, incorporating whatever safeguards that clearly must be built into any firm proposal that comes before me or that I take to Cabinet for consideration.

The fact is, of course, that in most of the areas that we are talking about there is for practical purposes no waiting list. It is a well known fact that we are treating a large number of Tasmanian patients in the cardiothoracic unit. Under a contractual arrangement with the Tasmanian Government, Tasmanian patients come to Adelaide for a fixed package fee, have their coronary bypass surgery and return home. That has been going on for a number of years.

I repeat, for practical purposes there is no waiting time at the cardiothoracic unit. There may be a period during which a patient is assessed, and so forth, but from the time of being assessed as a suitable candidate for bypass surgery to the time of the actual operation is a period of less than three weeks. There is, for practical purposes, no waiting time for several procedures in ophthalmology at the Flinders Medical Centre. Operations such as lens extraction and replacement are done on a day surgery basis in the new unit at Flinders, which is remarkable by any standards, so there is no waiting time there. That is the sort of unit; that is the sort of world expertise to which the patients to whom we are referring would be attracted. They are just two: there are a number of others.

The whole package at this stage, as I said, needs extra work. What is proposed, as I understand it, is that Med Vet Pty Ltd, a private company of the Institute of Medical and Veterinary Science, would be used as the vehicle. I made it very clear that the senior administrators in the teaching hospital system would not be too enthusiastic about a project which did not put something back into their hospitals, so it would be essential if they were to act as catalysts in the organisation of the scheme that there would have to be something in it for them. Incidentally, it is not new—these sorts of packages have been offered in Perth now for at least two years to the best of my recollection. So, something would have to go back to assist the budgets of our major teaching hospitals.

The other thing that I would insist on from a humanitarian point of view is that some of the profit generated from what would obviously be rich South-East Asian patients would ultimately have to be reinvested in exporting medical

expertise to the lower income earners, to the broad masses if you like, in South-East Asian countries so that the scheme, in its early or foundation stages, would be an elitist scheme in a sense because only patients who could afford to come here and pay several thousands of dollars for the package would be eligible. Some of that profit would go back to treating public patients in our system and, also in the longer term, some of that generated profit would go back to treating low income patients and to export medical expertise to South-East Asian countries. Again, there is nothing terribly new about that.

Mr David David and his craniofacial team have been operating in a very similar way for a very long time. The significant difference, if you like, is that there is no means test on the patients that are brought here from South-East Asia or China or beyond—from the Western Pacific basin generally—but they are treated here. With a variety of financial support, some of it from the cranio maxilo facial foundation, some of it from private practice accounts in the hospital, and some of it due to the generosity and the philanthropy of the surgeons and anaesthetists in the team, the craniofacial unit or members of it regularly visit countries in South-East Asia. More recently they have established a sister hospital or sister unit relationship with the Ninth People's hospital in Shanghai.

So, on balance, if it is able to be brought to fruition, the scheme will involve a guarantee that we use the additional beds in the private hospital system, a guarantee that no South Australian patient will be disadvantaged in any way, and the opportunity to continue to foster excellence in Adelaide which is already in my view becoming the Boston of the South. There is at this time, I would suggest, as much clinical excellence as—

The Hon. L.H. Davis: What happened to Athens?

The Hon. J.R. CORNWALL: That was in the 70s. There is a great deal of clinical and surgical excellence in our system in the late 1980s. There is a great deal of world class work going on in our great research institutions as evidenced by the latest story to come out of the IMVS only on Sunday. It seems to me that this is one of the ways in which we can take some of that excellence to other parts of the world and foster even further the reputation that we are rapidly gaining in Adelaide for being, I repeat, a centre of excellence and, I believe, for becoming potentially a city of medical excellence which in many ways will be comparable to Boston and the great Harvard Medical School and its institutions within the Harvard University.

HODBY AND SCHILLER CREDITORS

The Hon. K.T. GRIFFIN: I seek leave to make an explanation before asking the Attorney-General a question about payments to Hodby and Schiller creditors.

Leave granted.

The Hon. K.T. GRIFFIN: Newspaper reports at the end of last week, following the conviction of Hodby and Schiller, indicate that the Attorney-General expects all creditors of these two persons to be paid out in full. Some creditors have taken that as a commitment, while others who have contacted me are suspicious that it will not occur. Some land brokers have asked about the legality of paying out from the compensation fund creditors of these two, who were acting as finance brokers and not land brokers and, if pay-out is to be made, whether it will also extend to creditors of other defaulting land brokers, such as Field.

Reports at the end of last week also indicate that the Minister is examining whether or not the assets of these two can be confiscated. These two are, in fact, bankrupt so their personal assets cannot be confiscated by the Crown. They are already in possession of the Official Receiver in Bankruptcy. In view of the wide range of investors who have suffered loss—from elderly people to a paraplegic, to families who have lost their savings—there needs to be clarification of the Government's position and of what steps it will take in respect of the claims of the creditors. My questions to the Attorney-General are as follows:

1. Will all the creditors of Hodby and Schiller be paid in full and, if so, from what funds will that occur and, when will it occur?

2. Is there any doubt about the legality of paying out funds from the compensation fund?

3. Is it correct that no recovery can be made from the assets of Hodby and Schiller because of their bankruptcy?

4. Are the creditors of other defaulting land brokers also to be paid out in full?

The Hon. C.J. SUMNER: Towards the end of last week I said that I was confident that the victims who had suffered loss in these unfortunate matters would receive 100 per cent payment. I think I used the word 'probably' because it was qualified by the fact that, obviously, if tomorrow another land broker or land agent goes into liquidation, owing more millions of dollars then, of course, that will make the situation more difficult.

Nevertheless, I can assure the Council and victims of these frauds that the Government will be doing everything it possibly can to ensure payment in full to those victims. I am confident that over a period of time that can happen. Therefore, I am not resiling from what was said on Friday. I repeat that I am hopeful that the victims can receive 100 per cent compensation. However, that is subject, of course, to the rider that no major claims are made on the funds from other sources in the near future. Obviously, some considerable work remains to be done, and I am very sympathetic to the situation in which these people find themselves.

However, close to 800 matters have to be dealt with. I understand that in some matters the claims are complicated by the fact that some money was advanced by the victims not for investment by these persons but by way of a joint business enterprise. Obviously that has to be sorted out. Under the legislation there must be some provision for fiduciary default on the part of the brokers. So, for better or for worse, the investigations are complex and those issues will have to be followed through by the investigatory team.

As to the question whether there is doubt that these people were operating as finance brokers or land brokers, I have noticed that in the media there has been a little bit of correspondence from the land brokers, who claim they operated as finance brokers, and this morning, in a letter to the editor in the *Advertiser*, there was a riposte from the finance brokers saying that these people were land brokers. Obviously that matter needs to be pursued in the technical sense. Although the matters have to be clarified—as I have said, they are complicated—it seems that, in most cases when investors entrusted funds to Hodby and Schiller, they did so on the understanding that a mortgage document would be prepared. That is a function of a land broker.

Although the ultimate decision in these matters is one which has to be made by the Commercial Tribunal, the Department of Public and Consumer Affairs believes that most of the claims can be admitted, save those that I have already mentioned as potentially creating some problem because it may be that there was a business joint venture involved, as opposed to the provision of money to the

broker for investment on behalf of the client. So those matters certainly need to be resolved.

As to the recovery of other moneys that may have been transferred by Hodby or Schiller to other persons, that matter is being pursued by, I think in the case of Hodby, the Official Receiver. However, it appears that no further funds can be collected there. In the case of Schiller, I understand that the firm of accountants, Price Waterhouse, is carrying out further investigations to see whether or not moneys that were transferred by Schiller can in fact be recovered. So again, that matter will be monitored and all that can be done will be done to get whatever funds can be recovered. What was the other question?

The Hon. K.T. Griffin: Creditors of other defaulting land brokers.

The Hon. C.J. SUMNER: Obviously one would not want to pay out these persons in full and leave others lamenting. What will have to be put together eventually is some kind of package that satisfies everyone concerned. The matter is, to say the least, unfortunate. It is complex, but all I can say is that, as Minister, I hope to do whatever is possible to ensure that the payments are made. I understand that in the case of the L.A. Field matter some payments are still outstanding, and that the Commissioner for Consumer Affairs has already been approached by that group of claimants. Any consideration of paying the Hodby and Schiller claimants will also have to take into account additional claims from the L.A. Field claimants.

I have asked the Commissioner for Consumer Affairs to consider ways in which all claims in respect of the defaulting agents and brokers can be paid in full. I reassert that probably (but certainly not tomorrow) those claims can be met in full over time. But certainly we must first go into the complex investigation procedure involving some 800 claims.

The Hon. K.T. Griffin: How many have you got working on it now?

The Hon. C.J. SUMNER: Well, there is an investigation team. The Department of Public and Consumer Affairs has already set up a task force to deal with the investigation of claims, and it is a priority objective of the department to finalise the investigation phase and have the matters before the Commercial Tribunal (and that is where they have to go) by 30 September. That may seem to be a considerable time and, certainly, if it can be speeded up we will do that. However, one is faced with a situation where it is not possible, even though an investigation might have been completed in one case, to attempt to give compensation for that matter until all the other matters have been resolved.

Therefore, the priority is, first, to work out what are the claims against land brokers. There are two problems involved in that. The first, as I have indicated, is whether or not the people who gave money to the land brokers asked the land brokers to invest on their behalf in first mortgages and real estate or whether they were joint venturers with the land brokers. Secondly, the claim for each individual client or person who lodged moneys with these brokers has to be worked out, and that is also not a particularly easy task. It is complex; it will take some time. It is hoped that, once those matters are settled, they can go to the Commercial Tribunal.

I believe also that the income of the Consolidated Interest Fund will increase over time because interest on the credit balance held in agents' trust accounts will be paid by banks from 1 April 1988 at the latest in lieu of the payment of interest on a proportion of trust moneys only. That is the result of legislation passed by the Parliament. Therefore, what must happen next is that all the claims have to be investigated and verified and the Commercial Tribunal approached for orders to pay the compensation. I am not sure precisely how many people are on the task force, but it has certainly been set up as a priority to carry out these investigations. I repeat what I said last week: I am hopeful that claims can be met in full.

NATURAL RESOURCES

The Hon. L.H. DAVIS: I seek leave to make a brief explanation before asking the Minister of Local Government a question about Government ownership of natural resources.

Leave granted.

The Hon. L.H. DAVIS: The Minister will recollect that last year the Minister of Labour (Hon. Frank Blevins) in a prepared speech to a conference of the Public Service Association called for greater Government ownership of natural resources. At that time the speech received widespread coverage in the print media and on television. For example, on the Channel 2 *7.30 Report* the Hon. Mr Blevins expanded on his remarks and said:

> The State Government should own up to 50 per cent of the massive Roxby Downs uranium/copper/gold mine.

For people in the mining industry the Hon. Mr Blevins's remarks came as a surprise, particularly in view of his strident opposition to the Roxby Downs (Indenture Ratification) Act in this Parliament in 1982. The State Labor Government's policy on mineral resource development, and more particularly public ownership of natural resources, is a matter of concern, and understandably it is also a matter of public interest. My questions to the Minister are as follows:

1. Does the Minister support Mr Blevins's public call for greater Government ownership of the State's natural resources?

2. Does the Minister agree with Mr Blevins's suggestion that the State Government should have a 50 per cent interest in the Roxby Downs development?

The Hon. BARBARA WIESE: If my memory serves me correctly, the Hon. Mr Davis asked me this question some time last year following the public statement made by the Hon. Mr Blevins at a meeting that he addressed. If I recall correctly my reply, I indicated at that time that I am not the Government's spokesperson on resources policy or on minerals and energy policy. Indeed, my colleague the Hon. Mr Payne is the Government spokesperson on such issues. He is the person whom I would consult if I were to make public statements about such issues on behalf of the Government—not that I am sure I would be invited to do so since he represents so ably the Government's views on these issues.

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order! You have asked your question.

The Hon. BARBARA WIESE: The Hon. Mr Blevins and any other Minister can choose to do whatever they please with respect to making statements as individuals or as Government Ministers. It is my view (and this is the practice that I follow) that I am not prepared to make public statements on issues that are the responsibility of another Minister, unless I have some responsibility in the area myself. I do not have any responsibility in the area to which the honourable member has referred, and I suggest that, if he is interested in hearing the Government's viewpoint, he should address his question to the appropriate Minister or, if he would care for me to refer it to him, I will be happy to do so.

The Hon. L.H. DAVIS: By way of supplementary question, as the Minister believes that she should not make a

public statement on any matter that is not directly within her portfolio responsiblity, does she agree that the Minister of Labour, Mr Blevins, should have made a public statement on a matter of mines and energy which, quite clearly, is not a matter of his responsibility?

The Hon. BARBARA WIESE: It is for the Minister of Labour to decide whether he makes statements about the responsibilities of other Ministers. I understand that he addressed a number of issues during the course of his speech and that a number of the comments made were very well received by the gathering that he was addressing. That is an issue for the Minister of Labour and for other Ministers.

The Hon. L.H. Davis: Do you agree with what he said?

The PRESIDENT: Order!

The Hon. L.H. Davis interjecting:

The PRESIDENT: Order!

CHILDREN'S SERVICES QUESTIONNAIRE

The Hon. M.J. ELLIOTT: I seek leave to make a brief explanation before asking the Minister of Tourism, representing the Minister of Children's Services, a question on a children's services questionnaire.

Leave granted.

The Hon. M.J. ELLIOTT: A questionnaire entitled 'Have your say in children's services—a community response questionnaire' is currently being circulated to kindergartens. The first line states, 'Isn't it great to have a say?'. It then rambles on for some pages. At the end it asks three questions and gives enough room for two sentence answers to each of them, yet the issues that this purported questionnaire takes on are indeed very complex. Indeed, a great deal of concern has been raised amongst parents of children at kindergartens. I ask the Minister the following questions:

1. Is this questionnaire in response to any green paper that has not yet been released and, if so, will it be released?

2. How will the consultative committee collate information returned from such a vague questionnaire?

3. What action is planned next?

4. Will the Minister guarantee that the kindergarten components of the Chilren's Services Office will not be undermined in any way, particularly in relation to the closure of centres, on alteration in staffing levels or a change in the entry age for children?

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

HARLEY MEDICAL CLINIC

The Hon. R.J. RITSON: I seek leave to make an explanation before asking the Minister of Health a question on the Harley Medical Clinic.

Leave granted.

The Hon. R.J. RITSON: A clinic called the Harley Medical Clinic which is based in London and which advertises cosmetic surgery services and markets them commercially, I understand attracting trans-Atlantic trade, is operative in Melbourne and Sydney. It seems to advertise and operate in juxtaposition to established cosmetic firms. I have, for example, a copy of the yellow pages of the telephone book carrying an advertisement for a cosmetic beautician service and beneath it an advertisement for nose refinement, otoplasty (ear correction), liposuction, face and neck lifts and breast reductions.

The Hon. J.R. Cornwall: What was their address again?

The Hon. R.J. RITSON: It is 100 William Street, Sydney—the same building but a different office. I seek leave, for the Minister's benefit, to table that example of advertising.

Leave granted.

The Hon. R.J. RITSON: The next item of explanation involves a letter from the President of the Australian Society of Plastic Surgeons, to the Chief Executive Officer of the New South Wales Medical Defence Union. The letter states, among other things, that the surgeons performing the operations for this clinic: 'describe themselves as plastic or perhaps cosmetic surgeons and usually the more dubious the individual the more likely he is to appear in the media by name, and to make exaggerated or sometimes frankly false claims for the efficacy of his treatment'.

The letter is generally critical of this type of entrepreneurial practice. It is particularly critical of the fact that the surgeons fly interstate, operate and fly out again the same day, often not to see the patient again. It seeks some redress from the Medical Defence Union. I seek leave to table that letter.

Leave granted.

The Hon. R.J. RITSON: The third letter is from the President of the South Australian Society of Plastic Surgeons to me seeking representation on this matter. It describes the clinic and its method of advertising and of attracting patients. The letter makes the following point:

> The majority of surgery is performed by general practitioners calling themselves 'cosmetic surgeons', and occasionally one of the practitioners has an FRCS. Surgery is on a commission basis, and clearly the Harley Medical Clinic does very well.

The principal point of the letter is that it contains a description by a nursing sister closely associated with plastic surgery at a certain South Australian public hospital. She answered an advertisement in the *Advertiser* calling for registered nurses to become involved in a cosmetic clinic. She attended an interview in the premises of Ashley and Martin and spoke with a chap who told her that the job would involve interviewing patients and organising bulk surgery lists. He further advised that the clinic was the Harley Medical Clinic and that permanent accommodation was being sought, although at that time not established. However, extra operating lists had been organised at a certain hospital. At present some hair transplant work is done at this hospital by a certain doctor (an ex-South Australian presently practising in general practice in Melbourne). It was uncertain whether this doctor or other surgeons would be performing costmetic surgery.

One of the points of contention which is raised in more material that I will freely offer the Minister after asking this question is that fees, for a breast reduction, for example, seemed to be of the order of $3 000. Breast reduction is an item refundable under Medicare and from memory the refund is of the order of $600. I am in possession of material complaining that patients are not informed that some of these items are refundable. The alleged reason for withholding this information is that, if the size of the refund could be matched against the size of the fee charged by the Harley Clinic, the magnitude of the money extraction would become very obvious to the patient. My questions are:

1. In view of the allegation that the Harley Clinic is about to commence operations in a certain South Australian hospital, the name of which I will give to the Minister afterwards, and in view of the very serious questions over the quality and cost of the service and the fact that so many people, including the nursing sisters who drum up business for the clinic, are on commission, does this represent the type of practice that the Minister might use his powers of direction over private hospitals to control?

2. After taking advice, will the Minister consider whether such control should be exercised over the Harley Clinic if it commences operations in South Australia? I seek leave to table a letter addressed to me from the South Australian Society of Plastic Surgeons.

Leave granted.

The Hon. J.R. CORNWALL: Let me clarify the suggestion that I have powers of direction over private hospitals. That is not so. The South Australian Health Commission licenses private hospitals and, as such, it can ask them to meet certain conditions of licensing. However, I would not think that a sledgehammer would have to be used in this particular instance. If these specialists, if they are specialists, wish to practise their specialty in South Australia, they would need to be registered with the South Australian Medical Board. In its registration powers, the board performs a dual role. The first is to protect the profession. In other words, a person cannot hold himself out to be a type of specialist unless he is on the specialist register. That, in turn, is a significant protection for the consumer. Holding out is an offence, so it is a protection of the other specialists against charlatans who might hold themselves out when they do not have specialist qualifications. It is a protection for the consumer who might go to a so-called specialist in good faith, and that person is not a specialist.

In this instance, the registration powers and the necessity to be registered before a specialist can practise legally in South Australia offer a very substantial measure of protection. I will not express opinions concerning this particular clinic or those who work for it based on the evidence that has been presented to the Council today by Dr Ritson. Obviously, I would need to have these matters checked out further. If some of the allegations, which are serious, are validated, the matter should be given substantial publicity so that potential consumers can be warned. Most importantly, if Dr Ritson has this documented evidence of an intention to practise in South Australia in a way that might breach the Medical Practitioners Act in a number of significant ways, he should draw it urgently to the attention of the President or Registrar of the South Australian Medical Board.

CHILD ABUSE

The Hon. DIANA LAIDLAW: I seek leave to make a brief explanation before asking the Minister of Community Welfare a question about child abuse and the Justice Information System.

Leave granted.

The Hon. DIANA LAIDLAW: For some time, as the Minister would be aware, there has been uncertainty about the status of records maintained by DCW in relation to notifications of child abuse and the fact that the Government proposes to incorporate the child abuse data base system into the Justice Information System this year. For my part, I have referred to these concerns in the past in debate in this place and specific questions were raised by Liberal members in the other place during the Estimates Committee on 23 September last year, and I refer specifically to those questions, as follows:

1. Are all notifications of alleged child abuse retained on file even though the evidence may not be sufficient to proceed to prosecution or even though the charge may be dismissed?

2. If so, for how long is the entry of alleged abuse maintained on the file?

3. Will allegations of abuse that are not substantiated be incorporated into the Justice Information System? In response, the Minister referred the question to Mr Rod Squires, who stated:

> It is a contentious issue which is receiving attention within the department . . . currently we must determine how long the names of children will remain on this notification index and the registration index. We have not yet firmed up the time period. We need to address those issues and finalise the time period by about the end of November this year.

That is, November 1987. Mr Squires continued:

> These decisions are critical when we are incorporated into the Justice Information System. We are very conscious of the need to tidy up our register and the notification index.

I therefore ask the Minister:

1. Has a decision been made on how long the name of a child who is an alleged victim of child abuse will remain on the department's notification index and registration index and, if so, what is that decision?

2. If not, will he confirm whether he believes that the child abuse data base to be incorporated into the Justice Information System will or should include unsubstantiated allegations of child abuse?

The Hon. J.R. CORNWALL: In the little time that is available, I will answer that question fully and comprehensively. I always try to give Ms Laidlaw as much positive information as possible.

An honourable member interjecting:

The Hon. J.R. CORNWALL: He is a funny fellow, funny as in peculiar, is Mr Dunn. At the moment, as the Hon. Ms Laidlaw would know, a green paper entitled 'Social welfare—the next five years' has been circulated for comment and consultation and it will eventually come back for consideration in its final form as a white paper. A decision has been taken quite recently at my suggestion and at my request that, as part of that white paper, which will become formal Government policy for the next five years, we should also incorporate within it two additional areas: child protection and the question of protocols and quality of practice. That will be a very comprehensive white paper which will chart new and very positive directions for the Department for Community Welfare in this State for the next 10 years and beyond.

The question of child protection has been a vexed one. The quality of practice, the question of in-service training and a number of other issues have been challenged by many people. Many of those challenges have been spurious, ill-founded and destructive, and have done nothing to advance the cause of child protection in this State.

Sadly, of course, the Opposition has often been associated with those spurious and negative attacks. Nevertheless, we have taken the whole question of setting standards and revising medical protocols and work practices very seriously indeed. That is why we established the South Australian Council on Child Protection, chaired by Dame Roma Mitchell, and the Joint Unit on Child Protection, which is a joint health and welfare initiative. That is also why all the protocols and procedures are under review. So, the question of the practice issues within the department generally—and in the matter of child protection, in particular—will be incorporated in the white paper.

The Hon. Diana Laidlaw interjecting:

The Hon. J.R. CORNWALL: Hang on! That immediately raises the question of record-keeping. It is my opinion, having had time to think about this and reach a decision, that the current record-keeping errs on the side of being too extensive. Quite obviously, there is a middle line which we must try to tread. The fact that there has not been enough hard evidence gathered to launch a successful prosecution in the area of child abuse—in particular, child sexual abuse—is not sufficient to erase a record forever. On the other

hand, the fact that there has been a notification of the possibility of a suspicion of child abuse in areas ranging from so-called non-accidental injury through to severe child sexual abuse does not mean that a record should be automatically expunged. It is necessary to have some records to be able to indicate—just as one might with police cautions—that people have previously come to the attention of the department.

The Hon. Diana Laidlaw interjecting:

The Hon. J.R. CORNWALL: No, there has not been a formal strike-out, if that is what you mean. This whole business will go forward in this white paper that I am talking about.

The Hon. Diana Laidlaw interjecting:

The Hon. J.R. CORNWALL: Stop interrupting! You are a very rude and foolish woman; you cackle like a chook.

The PRESIDENT: Order!

The Hon. DIANA LAIDLAW: A point of order, Madam President, I ask the Minister to withdraw and apologise for those words and reflections on me because they are unnecessary and unprovoked.

The Hon. J.R. CORNWALL: I was provoked into calling her a very rude woman, Ms President. If she finds that offensive, I withdraw and apologise.

The PRESIDENT: I found the remark which followed offensive and I ask you to withdraw it.

The Hon. J.R. CORNWALL: I was not referring to you.

The PRESIDENT: You were referring to a member of this Chamber and it is my responsibility to maintain order. I ask you to withdraw that remark.

The Hon. J.R. CORNWALL: Ms President, any reasonable request of yours I would meet at once.

The PRESIDENT: Thank you.

The Hon. J.R. CORNWALL: Particularly if it costs nothing. With regard to the question of records, I was trying to say, when I was persistently and most inappropriately interrupted by Ms Laidlaw, that my strongly-held personal view, having had time to think the matter through, is that the record-keeping is too extensive and as part of the issue of quality of practice and the protocols for child protection it will be amended. It will be amended when I have in hand a comprehensive white paper which will chart the directions of the department for the next decade and beyond.

The Hon. DIANA LAIDLAW: I ask a supplementary question. Will the Minister confirm that the incorporation of the child abuse data base maintained by DCW will not be incorporated into the Justice Information System until this matter has been resolved and therefore will not be incorporated within this financial year as was proposed before the Estimates Committees?

The Hon. J.R. CORNWALL: I am not in a position to say yea or nay, Ms President. As I said, the whole question of protocols, quality of practice and child protection will be in the white paper which I hope to take to Cabinet before 30 June and, of course, there will be new practices established within that white paper of one form or another and they will be the practices in which records will be kept.

The PRESIDENT: Call on the business of the day.

ADOPTION BILL

The Hon. J.R. CORNWALL (Minister of Community Welfare): I move:

That the time for bringing up the report of the select committee on the Bill be extended until Tuesday 27 March 1988.

Motion carried.

SUPPLY BILL (No. 1) (1988)

Second reading.

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

Its purpose is to grant Supply for the early months of next financial year. Present indications are that appropriation authority already granted by Parliament in respect of 1987-88 will be adequate to meet the financial requirements of the Government through to the end of the financial year. The Government will, of course, continue to monitor the situation very closely, but it is unlikely that additional appropriation will prove to be necessary. The 1987-88 budget provided for a net financing requirement of $354.8 million. While it would not be prudent to make precise forecasts at this stage, I can advise honourable members of some of the factors which will influence actual outcomes this financial year as compared with the budget estimates.

On the receipts side there are indications that receipts may come in ahead of budget. While subject to uncertainty, it is likely that the contribution from the Lotteries Commission will exceed the budget estimate due to higher than expected turnover for X-Lotto. The higher turnover results from the response to higher than normal jackpots during the first half of the year. Commonwealth general purpose revenue is also expected to exceed the budget estimates by $3.2 million due to a reassessment of the population estimates for South Australia based on the results from the 1986 Census which revealed that the State's population has been underestimated by the Australian Bureau of Statistics. This increase in Commonwealth funding is of course relatively minor in the context of the total real decline in Commonwealth funding experienced by the State.

The most significant variation on the receipts side is likely to occur in stamp duties. Once-off sale of a number of shopping centres together with a general improvement in the property market is likely to improve stamp duty receipts. The increase in the rate of share transactions may also have a beneficial impact in the short term at least. Offsetting these improvements however, receipts from duty on registration and transfer of motor vehicles are likely to be somewhat less than expected.

There are also some areas in which there may be an overall deterioration in receipts. Royalty income may be somewhat less than expected due to adverse weather conditions impeding transport of crude oil from outlying fields. The reduction in grants for technical and further education announced in the Commonwealth budget will also reduce expected receipts by $2.2 million. Overall, the expectation is that receipts may be above the budget estimate.

On the expenditure side, the Government is maintaining its policy of tight control. As we stressed last year, the budget for 1987-88 is one of restraint and agencies were given the task of achieving major economies in order to live within their allocations. In general it is expected that these economies will be achieved. A reduced pumping program by the Engineering and Water Supply Department has reduced electricity costs for the department. It is also likely that

some workers compensation costs originally expected to be borne by the Health Commission this year, may not be incurred until 1988-89.

It is too early to estimate the likely impact of second tier wage determinations. Committees established as a result of settlements for departmental employees and hospital workers are currently at work identifying offsets and productivity improvements. At this stage there is some indication that not all offsets are achievable in this financial year. The work undertaken by these committees will affect the overall budget result. A number of claims for second tier increases also remain to be settled and until decisions are made it will not be possible to estimate the likely budget impact with any precision. All agencies however have been instructed to keep within the budget and to make further savings and efficiencies. Honourable members will recall that no specific provision was made in the budget on the basis that increased productivity would offset increased costs.

Capital budget: At this stage it is anticipated that there may be some overall improvement in the budget in relation to capital works. This is expected to result from an increase in transport funding received from the Commonwealth of the order of $6 million. This funding has been provided for STA buses. The size of the STA works program was determined on the basis of needs and will not need to be changed as a consequence.

Overall budget result: At this stage of the year, it is expected that the overall outcome on Consolidated Account may show some deterioration in relation to the estimate. However, it is too early to estimate how significant any discrepancy might be. In relation to next year, while it is far too early to make predictions, there is nothing to indicate that the Government will be able to relax its policy of maintaining firm control over expenditures.

Supply provisions: Turning to the legislation now before us, the Bill provides for the appropriation of $700 million to enable the Government to continue to provide public services during the early months of 1988-89. In the absence of special arrangements in the form of the Supply Acts, there would be no parliamentary authority for expenditure between the commencement of the new financial year and the date on which assent is given to the main Appropriation Bill. It is customary for the Government to present two Supply Bills each year, the first covering estimated expenditure during July and August and the second covering the remainder of the period prior to the Appropriation Bill becoming law. That practice will be followed again this year.

Honourable members will note that the authority sought this year of $700 million is approximately 8.5 per cent more than the $645 million sought for the first two months of 1987-88. Care should be taken not to attach too much significance to the precise rate of increase. Each 1 per cent represents only $6.5 million. Therefore, the difference between an adequate figure and one which might leave the Government short of appropriation authority can appear quite significant in percentage terms.

Clause 1 is formal.

Clause 2 provides for the appropriation of up to $700 million and imposes limitations on the issue and application of this amount.

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

LOCAL GOVERNMENT ACT AMENDMENT BILL

In Committee.

(Continued from 25 February. Page 3113.)

Clause 10—'Repeal of Parts IX to XV and substitution of new Parts.'

The CHAIRPERSON: When the Committee reported progress, clause 10 page 31 was under consideration and the Hon. Ms Laidlaw had moved an amendment which sought leave, which was subsequently granted, to move the amendment in an amended form from that which is on the file. The alteration was on the seventh line of the amendment to delete the word 'rate'. Progress was reported at that stage. The Hon. Ms Laidlaw, I know you have spoken to this amendment but you might like to briefly remind the members of its substance.

The Hon. DIANA LAIDLAW: I understand that members have informed themselves of the arguments presented last Thursday evening and, therefore, notwithstanding your invitation to go over those arguments, I do not think that I should take up the time of the Committee for that purpose. However, I would like to refer to some new material which has arrived in recent days and which it is important to note for the record. I do so principally because the Minister, in responding to my amendment in an amended form, indicated not only her opposition to the arguments I was presenting but also noted:

> Just in passing, I observe that it is just another occasion on which the LGA is raising things at the last minute without consultation. This is not an issue that has been raised by the LGA with me or with officers of my department at any time. I am not suggesting that the LGA does not have the right to do that; what I am indicating is that this is exactly the sort of situation I have been dealing with over the past six or nine months.

In the light of that statement, it is very important for members and other persons taking an interest in this debate to recognise that the Minister, on 4 December 1987 in circular No. 30/87 to all mayors and chairmen of councils throughout the State, forwarded comment on the Bill that she had introduced on 5 November. This bulletin of 4 December notes on page 3, in respect to external approvals:

> As a result of the Local Government Association's request that it would now like certain features and formulas inserted in the Act rather than set out in regulations or proclamations, I have agreed to move amendments to do so. Those which will be of most interest to councils are the borrowing and expenditure levels applicable before a project requires Ministerial consent. These levels will now be inserted in the Act.

The first relates to expenditure in excess of 20 per cent of the council's total recurrent expenditure for the previous year, and the second, which is of principal concern to us for the purposes of debate on this clause, is the statement:

> Borrowing (or giving a guarantee) where the council is already expending at least 30 per cent of its annual revenue in interest and capital repayments, and the effect of the proposal would be to commit at least another 10 per cent of its annual rate revenue to such expenditure.

It is hardly surprising that the Minister heard little, if nothing, from councils about their expressing concern about reference to annual rate revenue when indeed she informed them on 4 December that the amendments she would be moving would in fact be referring simply to 30 per cent of its annual revenue. Therefore, I believe that that advice to councils, of her commitment to them, is the situation I am now seeking to achieve in this amended amendment.

The Hon. I. GILFILLAN: The Democrats support the amendment with a couple of observations. It is reasonable to have presented to us some calculations, if the argument is to be pursued by the Minister that in fact it should remain 'rate revenue' as compared to 'revenue'. I interpret that as her position. It would be useful to have some comparative figures on what seem to be the projected differences between rate revenue and revenue. We support the amendment and it is reasonable to expect that it might have a rough passage in the other place. Therefore, it could be subject to further

debate and discussion. I give an undertaking to look seriously at any figures that the Minister would care to present on this matter.

The Hon. BARBARA WIESE: I am disappointed to hear that the Hon. Mr Gilfillan has decided to support this amendment, even at this stage. As I indicated when we were last discussing this Bill, I consider this to be a matter of such importance and significance that I had hoped he would support the Government's view on it at this time. However, I am heartened by his undertaking to listen to further argument and consider further information—statistical and other information—that I might be able to produce that would convince him that such a move as suggested by the Hon. Miss Laidlaw is in fact irresponsible. I would go so far as to say it is irresponsible to suggest that this amendment should be agreed to.

I will refer briefly to a circular that the Hon. Ms Laidlaw mentioned. It has been drawn to my attention that there was an oversight in the circular in that the word 'rate' was not included when councils were notified of the amendment that I intended to move. I see that the Hon. Ms Laidlaw laughs, but I think that she should also be aware of a series of seminars conducted around the State in June of last year. All of the notes circulated in relation to the seminars made it very clear that we were suggesting 'rate revenue' when we were discussing the terms under which such projects were called in. That was made very clear at these seminars and, as far as I am aware, there was no disagreement expressed at any of those seminars that that should be the basis of the examination of such proposals.

It has been a long standing practice in local government for rate revenue to be used as the benchmark for determining what is a responsible debt servicing level for councils. The reason for that is that all other forms of revenue are forms which are not under the control of councils to determine, such as fees from parking stations and specific purpose grants from the State and Commonwealth Governments. They are not matters over which the council has control. It has been a long standing view of everyone in the industry that, when a level of borrowing is being determined, it should be based on rate revenue because that is the only form of revenue that is controllable or predictable by councils.

Another important point needs to be considered. In an area like this, where we are granting more extensive powers than ever before for councils to engage in all forms of activity—including commercial projects—there must be some form of monitoring process to ensure that the global borrowing limits are not exceeded. The State Government has a responsibility in this State, assigned to it by the Commonwealth Government, to monitor the global borrowing limits. One example of the sort of problem that could emerge if there is no provision along the lines that we have included in our original amendment is the situation where we have one council in the State which currently has a development proposal that would require a level of borrowing that would exceed twice the borrowing cake currently available to councils in this State.

If a council, any council, were able to proceed along those lines, without reference to anyone at any time, then it could be beyond recall by the time the State Government learnt about it and could attempt to do something in the interests of not only other councils in this State but, dare I suggest, the whole country. We do have some responsibilities with respect to global borrowing limits and this should be taken into account in the provisions of this Bill in relation to these new and far reaching provisions.

Having said that, I realise that I do not have the number in this place at this time, but I certainly hope that when I am able to produce further information for the Hon. Mr Gilfillan, with respect to the impact in percentage and financial terms of the amendment that has been moved by the Hon. Ms Laidlaw, he will be convinced that the Government's position is the more appropriate one to take.

The Hon. DIANA LAIDLAW: As I do not want this Committee to sit all night on this Bill, I will not dwell on this issue for too long. However, there certainly were challenges in the Minister's remarks that require a response from me. First, I utterly refute that I, or the Opposition, are being irresponsible in moving this amendment and I will not go over the arguments of last Thursday. However, I stand by those arguments.

I have also provided further information today which indicated that the Minister herself saw fit to advise councils last December that the 30 per cent would relate to annual revenue and not rate revenue. The fact that she now says that that is an oversight is convenient for the argument that she puts today. However, it really does not redeem the situation because, in fact, the Minister saw fit to slight the LGA somewhat last Thursday in suggesting that it was coming forward with new material on this issue and yet, when she makes changes to material that she had her name to in December, she says that it is simply an oversight. I find the two sets of standards amusing, and I certainly did laugh when the Minister offered such an explanation.

In addition, I state that, last June, the Minister may well have explained to local councils across this State that she was referring to annual rate revenues but, as all members who have taken a long standing interest in this Bill will recognise, there were many changes between June, when we were looking at the draft Bill, and November and December when this Bill was actually introduced. There was a lot of water under the bridge at that time and there was no reason for councils, or the Opposition, to believe that the Minister had not changed her mind on this matter, particularly when we see that confirmed, in this letter over her signature on 4 December.

Finally, in relation to the Minister's offer that she will provide the Australian Democrats—

An honourable member interjecting:

The Hon. DIANA LAIDLAW: I understood that the invitation was to the Australian Democrats to provide information in support of her arguments; I would certainly hope that she would provide that to myself and my colleagues, and I would certainly look at that information most seriously.

The Hon. BARBARA WIESE: I would be happy to provide to both political Parties, which must make up their minds on this issue, all the information that I am able to give. It would be a great help to me to have some sort of rationale for the amendment that is being moved by the Liberals in this respect, too, because so far the Committee has not really heard why or on what basis the amendment by the Liberal Party is being proposed.

The Hon. DIANA LAIDLAW: The Minister's last statement is absolute rubbish. I hope that the conduct of the debate today will be of a higher standard than she has just demonstrated. Last Thursday night I argued in detail in support of this amendment. I did not repeat the arguments today, despite the Minister's invitation to do so, simply because I understood that every member of this Parliament was familiar with those arguments and I did not want to take up the time of the Committee. I take affront at the Minister's last statement.

Amendment carried.

The Hon. DIANA LAIDLAW: I move:

Page 31—
After line 9—Insert 'or'.
Lines 12 to 15—Leave out subparagraphs (iii) and (iv).

I note that the Government has on file similar amendments which simply delete the number of projects that require ministerial approval in new section 197, which covers the procedures to be observed in certain activities.

Amendments carried.

The Hon. BARBARA WIESE: I move:

Page 31, lines 16 to 22—Leave out subsection (2) and insert new subsection as follows:

(2) The following do not require ministerial approval—
(a) road construction or maintenance;
(b) drainage works;
(c) the construction of car parking facilities;
(d) the construction of civic buildings and work depots;
or
(e) a proposal to form a partnership or other body with another council or with an agency or instrumentality of the Crown.

I think honourable members understand the import of this amendment.

The Hon. DIANA LAIDLAW: The Opposition is pleased to support the Minister's amendment, which adds to the projects that do not require ministerial approval.

Amendment carried.

The CHAIRPERSON: I point out that the Hon. Ms Laidlaw's amendment to page 32, line 20, to leave out (5) and insert (4), obviously involves a clerical error, which will be corrected without a formal amendment.

The Hon. J.C. IRWIN: Under proposed new section 198, should there be a public advertisement of the intention of a council to proceed under the Land Acquisition Act? I take it that, if there is no public notice, a council can more or less hide within itself the fact that it will go ahead with land acquisition. I also note that under this provision ministerial approval to acquire land under the Land Acquisition Act is not required where the council can acquire land under another provision of this legislation or any other Act. Why, under new section 198 (4), is ministerial approval not required where land is acquired under the Land Acquisition Act?

The Hon. BARBARA WIESE: The procedures for land acquisition are set out under the Land Acquisition Act, so it is deemed appropriate that they not be included in the Local Government Act. There is provision under the Land Acquisition Act for the owners of a property to be notified in regard to land acquisition, as they are the people who will obviously be primarily affected by that acquisition. It was thought desirable that ministerial approval be sought for acquisition proposals that do not relate to the usual range of land acquisition proposals in which a council might engage, such as land acquisition for building roads, for drainage or for things of that nature. Because of the extension of the legislation to allow entrepreneurial and commercial activity by councils, it is considered undesirable that the power to acquire land should be attached in those circumstances. Therefore, ministerial approval is required in the circumstances outlined in this provision. I hope that that answers the honourable member's questions.

The Hon. DIANA LAIDLAW: Does new section 198 (4) have the potential to require all councils to seek ministerial approval in relation to every purchase of land that is to be used for a project? The wording of the new subsection leaves that in doubt.

The Hon. BARBARA WIESE: I misunderstood the honourable member's initial question. This legislation will not require councils to seek ministerial approval for the purchase of land in general circumstances; these provisions relate only to compulsory acquisition. I move:

Page 35, lines 22 to 35—Leave out subsections (3) and (4) and insert new subsections as follows:

(3) Before approving an application the Minister may investigate whether it would be appropriate to include any other council as a constituent council and may, if he or she thinks fit, approve a controlling authority that includes another council or other councils as constituent councils.

(4) The Minister must not include a council as a constituent council under subsection (3) unless the council has been given a reasonable opportunity to make submissions to the Minister in relation to the matter.

(4a) The Minister may only include a council in a controlling authority under subsection (3) if the Minister considers—
(a) that an object of the controlling authority cannot be properly fulfilled without the inclusion of the council as a constituent council;
or
(b) that it is in the interests of local government in a part of the State that the council be included as a constituent council.

(4b) Where a constituent council of a controlling authority is to be a council included under subsection (3), the Minister may, after consultation with all of the constituent councils, make such consequential amendments to the rules of the controlling authority as the Minister thinks fit.

The purpose of this amendment is to make clearer the Government's intentions in relation to the establishment of joint controlling authorities. In particular, and in response to submissions that I have received, they provide for consultation before a council is joined as a constituent council of a proposed controlling authority.

The Hon. DIANA LAIDLAW: The Opposition certainly supports the deletion of the words 'on the condition'. Since this Bill was introduced into the Legislative Council, the LGA and a number of councils have expressed great concern about councils being forced into controlling authorities against their wishes. We believe that the removal of the words 'on the condition' will make this provision less dictatorial. However, the amendment also deletes new section 20c (4) and adds a new subsection (4). The Liberal Party does not accept that. Accordingly, I move:

Page 35, lines 27 to 35—Leave out subsection (4).

We believe that the Minister's amendment will tighten the Minister's control over the granting of approval for controlling authorities. We fear that the Minister will have too much control, especially in relation to forcing other councils into a controlling authority against the interests of a second or third council.

I assume that the Minister is moving these amendments possibly in relation to the situation of Burnside and Unley stormwater problems. That problem was raised from time to time when I was working with the Hon. Murray Hill when he was Minister of Local Government. Burnside, being the higher council, was always being blamed for the run-off of stormwater and flooding in the lower council of Unley. I would be interested to ascertain whether the Minister believes that these provisions, which we believe are heavy-handed, are in response to that situation of Burnside and Unley or whether she sees other circumstances as the reason.

The Hon. BARBARA WIESE: In proposing these amendments I trod very warily because the whole philosophy of the Bill, as I have indicated a number of times, is to provide as much flexibility, independence and autonomy for councils as I possibly can in the management of their own affairs. It was not a decision that I took lightly to add a clause to allow the Minister to compel a council to become involved in a controlling authority. I was very much influenced by the experiences to which the Hon. Ms Laidlaw has referred with respect to the controlling authorities that have been proposed for the mitigation of floodwater damage within

the metropolitan area. It is most unfortunate that a council whose area is considered to contribute to such problems as stormwater damage and flooding further downstream is unwilling to participate in finding a solution, presumably because it might require it to incur some sort of financial contribution or penalty by so doing. It leaves other authorities downstream with the job of trying to resolve the situation over which they have no control because of the refusal of one party to become involved.

I do not believe that there will be many occasions on which a Minister will want to use this power. I envisage that it will be used in very few circumstances because most councils faced with such a situation will accept their responsibility and agree to membership of a controlling authority designed to deal with the sort of issues to which I have just referred. I do not think the power will be used very often, but in the general community interest there needs to be such a power in order to ensure that what should occur does occur when a council, for whatever reason, refuses to cooperate.

In the framing of this provision, and after receiving representation from people in local government about the extent of such a provision and how wide the power might be, I agreed to restrict the use of the provision to two areas of activity only. They are contained in new subclauses (4a) *(a)* and *(b)* and will be used only where the object of a controlling authority cannot be properly fulfilled without the inclusion of the council as a constituent council or that it is in the interests of local government in a part of the State that the council be included as a constituent council. There will always be consultation on that issue prior to a council being compulsorily required to participate. As I indicated, in most cases councils will agree, when arguments are put well enough, but in those cases where councils are intransigent the power should exist to require them to join.

The Hon. I. GILFILLAN: There is certainly some obscurity about the distinction being drawn by the two previous speakers on this issue. Subclause (3) certainly gives the Minister quite a degree of authority in the setting up of an authority, including a council which may be reluctant. The issue cannot be forced, but I am not sure about the exact legal interpretation of subclause (3) if we pursue it diligently. The Minister's amendment is reasonable except for one factor: subclause (4) *(b)* is not acceptable—it is far too vague. The Democrats could support her amendment if the Minister would consider deleting *(b)* or, second best, replacing 'or' with 'and' between the two clauses; that would be acceptable. However, I would prefer that *(b)* be deleted. Unless the Minister can establish that an object of a controlling authority cannot be properly fulfilled without the inclusion of one or more other councils as constituent councils, it is then a flimsy argument to compel a reluctant council to join the authority.

The Hon. BARBARA WIESE: If the Hon. Mr Gilfillan has problems with these proposals, I am prepared to change 'or' to 'and' if that would satisfy his concern. I do not believe that it is necessary, but I understand the point he is making. If he feels more comfortable with that and the Committee is willing for us to proceed that way, I seek leave to change the word 'or' to 'and' in my amendment.

Leave granted.

The Hon. DIANA LAIDLAW: I understand that the Hon. Mr Gilfillan will not be supporting the deletion of subclause (4) and prefers the Minister's amendment. The Minister's amendment is, essentially, a compromise between the inadequacies of the Bill and the position that the Liberal Party has taken, that it was an obnoxious provision and should be deleted. Because the Minister's amendment is a compromise between the two positions, it is better than what is in the Bill at present, and the Opposition is pleased with that. I agree with the comments made by the Hon. Mr Gilfillan that the word 'or' should be changed to 'and', and it is heartening that the Minister has agreed to that proposal. We are united in that objective, and I say that only on the understanding that the Opposition will lose its amendment.

The Hon. Barbara Wiese's amendment carried.

The Hon. Diana Laidlaw's amendment negatived.

The Hon. J.C. IRWIN: I have a question concerning new subsection (8) *(a)*. There is no mention in any of the subparagraphs of liability of the constituent councils. Is it tied back to each of the constituent councils?

The Hon. I. Gilfillan: What about subparagraph (iv)?

The Hon. J.C. IRWIN: That concerns financial contributions to the controlling authority. I am talking about the liability. If that controlling authority falls under and becomes liable for a payment, where does that come back to the constituent councils?

The Hon. BARBARA WIESE: I refer the honourable member to new subsection (14), which reads:

> The constituent councils are, in the event of the insolvency of the controlling authority, responsible for the outstanding liabilities of the controlling authority in the proportions specified in the rules.

Clause as amended passed.

The CHAIRPERSON: There is a clerical error with clauses 11 and 12. What is designated in the Bill as clause 11 will become clause 12 and what is designated as clause 12 will become clause 11.

Clauses 11 to 14 passed.

Clause 15—'Sale of electric fittings.'

The Hon. DIANA LAIDLAW: I move:

> Page 37, line 10—After 'paragraphs' insert 'III,'.

This amendment aims to correct what the Opposition understands to be a drafting error. In this context, the inclusion of 'III' is necessary in this line in order to remove all the provisions that are now deemed superfluous in relation to the sale of electric fittings. Currently the Bill deletes only paragraphs IV and V, and I understand that paragraph III is also required to be deleted.

The Hon. BARBARA WIESE: The Government is prepared to accept this amendment.

Amendment carried; clause as amended passed.

Clauses 16 and 17 passed.

New clause 17 *(a)*—'Repeal of s. 514a.'

The Hon. DIANA LAIDLAW: I move:

> Page 37, after line 15—Insert new clause as follows:
> 17a. Section 514a of the principal Act is repealed.

The Opposition believes that this section has been left in the Act in error. It deals with the repayment of a loan on the sale of an undertaking in respect of gas or electric supplies. It will sit rather like a shag on a rock in the Act if it is not repealed but there may be some good reason why the Minister has left it in. If that is so, I seek her explanation.

The Hon. BARBARA WIESE: There is really no good reason for having left it in except that it was the Government's intention to deal with provisions relating to the Electricity Trust of South Australia in subsequent revision Bills. It was intended that the department would consult with authorities such as ETSA about those provisions and to make sure that everybody was happy about the repeal of certain provisions and the amendment of others. Because that consultation process had not been undertaken at the time, the provision was left in the Bill. However, since the Hon. Ms Laidlaw put her amendments on file, the department has consulted with the Electricity Trust, which is

happy about the proposed amendments. For that reason the Government supports the amendment.

New clause inserted.

Clauses 18 to 28 passed.

Clause 29—'Power of Governor to make regulations.'

The Hon. BARBARA WIESE: I move:

Page 39, lines 3 and 4—Leave out subparagraph (ii).

I move this amendment following a request from the Local Government Association that reference to the making of regulations preventing a fee or charge being imposed in respect of a particular matter should be removed and, consequently, any attempt to do so should be subject to the full scrutiny of Parliament. As it is the association's view that Parliament should look at these things, I am happy to agree to the amendment.

The Hon. DIANA LAIDLAW: The Liberal Party does not have any amendments on this matter, but I have received late advice not to support the Minister's amendment and to seek the deletion of paragraph (a6) (i). I understand that the Local Government Association, on behalf of councils in this State, sought the deletion of paragraphs (a6) (i) and (ii) and would like an explanation from the Minister if she seeks to remove subparagraph (ii) why she proposes to continue with subparagraph (i) because the argument that she put forward earlier could certainly be used to the same extent in the removal of the earlier part of paragraph (a6).

The Hon. BARBARA WIESE: I want to clarify the point that the Hon. Ms Laidlaw made in respect to the request from the Local Government Association for both of these provisions to be deleted. It is certainly true that in initial discussions with the association a request was made that both these matters be deleted, but following further discussion, during which the intentions of the provision were clarified—that is, that these should be reserve powers to allow scrutiny of council practices as councils are now empowered to levy fees and charges—the association indicated to my officers that it would not pursue the matter of the deletion of paragraph (a6) (i) and for that reason I have drafted my amendments accordingly.

However, I reiterate the point concerning the need for scrutiny in the interests of ratepayers in a council area where, for some reason or another, a particular council might impose a service charge which is unreasonable. In that case there ought to be some recourse for ratepayers and this provision is designed to provide that recourse, but to be a reserve power only. I do not think that any Minister of Local Government wants to get into the practice of talking with councils about such matters as fees and charges.

The Hon. DIANA LAIDLAW: In relation to the Minister's reference to discussions with the Local Government Association and its subsequent agreement with paragraph (a6) (i), I am uncertain when those discussions were held because the advice that I have received as at 24 February 1988 requests that this part be deleted. The association indicated that it wished to delete this paragraph and, in doing so, suggested that there seems to be a contradiction between this provision and the powers set out in section 195. While I indicate that I do not have an amendment on file to delete paragraph (a6) (i) I would so like to move.

The Hon. I. GILFILLAN: I congratulate the Hon. Diana Laidlaw on picking up this matter. It reflects a very diligent reading of the Bill. I have taken the opportunity during the contributions by other members to look at section 691 of the Act and, although it contains a definition of regulation-making powers, they seem to me to be much more facilitating and enabling regulations than the two listed in this Bill which appear to me to be intrusive into council decision-making processes. I therefore indicate that the Democrats support the amendment to delete paragraphs (a6) (i) and (ii). Regardless of what the Local Government Association says on this matter I am persuaded that this part of this clause does not fit properly into section 691 as it does in the original Act.

The Hon. BARBARA WIESE: I remind the Committee that the intention of these provisions is to provide great flexibility for councils to levy fees and charges, but this must be tempered with a responsibility that the Parliament and councils have towards taxpayers. This proposed provision simply provides a reserve power which would restrict the level of a fee or charge. The Minister would not be empowered to strike down a fee or charge, or indicate to a council that it does not have the power to levy such a charge, but would have the power to restrict the level of a fee or charge in the unlikely circumstance that a council should choose to use this provision as a new way of raising large sums of revenue as opposed to placing what might be considered a reasonable charge on a particular service.

There needs to be a protection for ratepayers should a council choose to use these provisions in that way because they are now so broad. I ask the Hon. Mr Gilfillan in particular to reconsider the position he has taken on this matter because, when I discussed it with LGA representatives—and I can only assume that the President and the Secretary-General of the LGA represent the views of the association—they indicated to me that they no longer had a problem with that issue.

The Hon. I. GILFILLAN: I indicate that my original argument still stands.

The Hon. Diana Laidlaw: Hear, hear!

The Hon. I. GILFILLAN: It is not actually a point-scoring exercise. I do not necessarily discount what the Minister is saying, and I believe the Bill increases the capacity of councils to charge fees, but I am very uneasy, because this regulating power is virtually arbitrary. In spite of the assurances of the Minister, I do not see that, as it is currently worded, it would prevent a Government of the day virtually determining precisely what a council may charge. It certainly would be the ceiling, but a council looking to charge a fair and proper fee would be just as controlled by a Government setting a ceiling if that ceiling was lower than the council had calculated was reasonable or felt was fair to charge. Certainly at this stage of discussion, I am not persuaded to change the Democrats' mind on this amendment.

Amendment negatived; clause negatived.

Clause 30—'Recovery of amounts due to council.'

The Hon. DIANA LAIDLAW: I move:

Page 39, line 24—Leave out '14' and insert '30'.

There are several consequential amendments to section 692 of the Act which provides for recovery of an amount due to a council. The amendment I move is related to the provision, whereby if a fee, charge, expense, or other amount that is a charge on land is not paid within 14 days of a demand by the council for payment the amount payable will bear interest.

The Liberal Party seeks to extend the 14 days to 30 days. We believe that this increased time of grace before interest is applied is a far more realistic and fairer length of time, particularly when a person upon whom the demand for payment is issued may not live in close proximity to a council administration area. However, that is only one example of many I could cite as reasons for extending the time from 14 to 30 days.

In my experience, although I have not personally been subject to such a payment to a council, the period of grace is 30 days and not 14 days after which interest is charged

on these matters, whether it be a credit card or other areas where money is owed. Therefore, I believe it is more in line with common practice that this period be extended to 30 days from 14 days as provided for in the Bill.

The Hon. BARBARA WIESE: This is not an issue on which I feel very strongly. However, I indicate to the Hon. Ms Laidlaw that the 14 days which is included in the Bill is taken directly from the current Act which provides for 14 days, and therefore that matter was not discussed in any negotiations that were held prior to the drafting of the Bill. We merely carried the provision through. Can the Hon. Ms Laidlaw indicate whether or not she has consulted with the LGA or councils about her proposed amendment and, if so, what is the attitude of the LGA to these matters?

The Hon. DIANA LAIDLAW: I thank the Minister for her question. I am not the shadow Minister of Local Government in the Liberal Party; that is the Hon. Bruce Eastick in the other place. I am representing the Liberal Party's interests in this place on his behalf. The shadow Minister has spent time discussing with councils and the LGA provisions in this Bill. I have material from the LGA which indicates its support. The general statement is:

The amendments you have proposed to the Bill are supported.

The Hon. BARBARA WIESE: In that case I indicate that the Government will support this amendment.

Amendment carried.

The Hon. BARBARA WIESE: I move:

Page 39, lines 26 and 27—Leave out all words in these lines after 'at' and insert 'the prime bank rate for that financial year plus 3 per cent'.

This amendment is designed to insert the formula which will be used within this legislation rather than within regulations as had been intended previously. It is also designed to clarify the Government's intention with respect to the legislation and, I believe, has the support of the LGA.

The Hon. DIANA LAIDLAW: The Opposition supports this amendment.

Amendment carried; clause as amended passed.

Clauses 31 to 46 passed.

New clause 46a—'Insertion of new ss. 877 and 877a.'

The Hon. DIANA LAIDLAW: I move:

To insert the following sections after section 876 of the principal Act:

877. (1) Subject to this section, an officer, employee or contractor of a council may, in so far as may be reasonably necessary for carrying out a project—

(a) enter land at any reasonable time;

(b) occupy the land on behalf of the council;

(c) (i) obtain earth, minerals or timber from the land;

(ii) deposit soil on the land;

(iii) construct temporary roads and structures on the land;

(iv) deposit or store materials on the land;

(v) carry out any other incidental activity on the land.

(2) The council is, except in relation to an owner or occupier of the land, liable for any nuisance or damage caused while in occupation of the land.

(a) rent on a quarterly or half-yearly basis, at a rate to be determined by agreement between the council and the owner or occupier or, in default of agreement, by the Land and Valuation Court;

(b) within one month after occupying the land—reasonable compensation for damage caused to any crops on the land;

and

(c) within six months of ceasing to occupy the land—reasonable compensation for any other loss or damage caused by the council, including the full value of any earth, clay, stone, gravel, sand or other minerals or resources taken from the land.

(4) Compensation payable by the council under this section may be recovered as a debt.

(5) The council must, at the request of an owner or occupier of the land, erect a fence of reasonable quality and design between the land and adjoining land.

(6) A council is not authorised under this section to enter or occupy—

(a) land that is within 450 metres of the curtilage of a house;

(b) a garden or a park;

(c) a quarry, brickfield or other similar place from which materials are commonly obtained for commercial purposes.

877a. An officer, employee or contractor of a council may in so far as may be reasonably necessary for carrying out a project, enter land at any reasonable time for the purpose of conducting surveys, taking levels and setting out land.

The Government has the same amendment on file. The amendment provides the necessary powers of entry and occupation of land in respect of permitting an officer, employee or contractor of a council to undertake *bona fide* projects. The clause also provides for appropriate compensation by a council to the owner or occupier for damage caused to any crops on the land or any other loss or damage caused by the council. The Opposition believes that is a positive addition to the Bill.

The Hon. BARBARA WIESE: As indicated, the Government also has this amendent on file. I agreed to move the amendment at the request of the LGA after it had received a submission fairly late in the day from a council which had requested that the provisions of the Act be reinstated. Up until the time of drafting of the Bill, it had been considered that councils could simply make agreements with landholders to achieve the purpose outlined. However, the council that contacted the LGA requested that these provisions be reinserted to ensure that, in the interests of the local community, the local resources could not be withheld in areas where little suitable material existed for road construction. To clarify that point I agree that the old provision should be reinserted. Therefore, the Government will support the amendment.

New clause inserted.

Clauses 47 and 48 passed.

Clause 49—'Delegation by Ministers.'

The Hon. DIANA LAIDLAW: I move:

Page 42, after line 9—Insert new subsection as follows:

(4) A register of delegations must be kept and made available for public inspection.

This amendment is very important to the Liberal Party. Clause 49 inserts into the Act a new section 889, which seeks to provide that the Minister may delegate any power or function of the Minister under this Act. The ramifications of the new section are enormous, particularly when one considers the extensive number of provisions in this Bill that require ministerial approval, consent, consideration, investigation or some other action according to conditions seen fit by the Minister.

When the Bill was introduced, 18 clauses—that is more than one-third of its 48 clauses—required one of the foregoing range of ministerial actions. With the amendments that have been passed to date—we are nearly at the end of this process—fortunately we have been able to reduce that number somewhat. However, the delegation power that the Minister seeks in new section 889 is not confined to the Director, as is usual in most of these cases. A delegation of power is usually to a person stated in the Act.

This legislation, however, does not name any office holders. In fact, the delegation of power is so open ended that it is not even confined within the department, let alone the Public Service. My amendment seeks to provide some degree of accountability in respect of the broad, sweeping power of delegation contained in this Bill and aims to identify

when and to whom the Minister deems it is appropriate to exercise her powers of delegation.

We are not seeking, as was my first inclination, to provide that the Minister may delegate only to a director or some other specific person or office holder in the department; we are seeking a register of the delegations that the Minister makes. We believe that this should be available for public inspection. The powers provided under this legislation as well as the powers that we have extended to the Minister are such that we believe that, whenever she delegates those powers, the delegation should be subject to public inspection and knowledge.

The Hon. BARBARA WIESE: I do not believe that this is as big an issue as the Hon. Ms Laidlaw is presenting. The wording that enables the Minister to delegate powers and functions is quite commonly used in legislation; I am advised by Parliamentary Counsel that this is so. In fact, it has been suggested that the Minister has the power to delegate whether or not such a provision is inserted in an Act of Parliament—that that power may exist under common law. In fact, in this case we are seeking to make clear that the Minister of Local Government may delegate certain powers and functions as most Ministers are able to do under their legislation. However, if it makes the Liberal Party and other observers happy, I undertake to set up a register listing any delegations that I make and to have it available for public scrutiny. For that reason, I support the amendment.

Amendment carried; clause as amended passed.

Clause 50 passed.

Clause 51—'Transitional provisions.'

The Hon. DIANA LAIDLAW: I move:

Page 43, line 4—After 'authority' insert 'or controlling body'.

This amendment seeks to clarify and accommodate a variation of terminology in the Bill, which refers to both a controlling authority and a controlling body. We believe that references to both a controlling authority and a controlling body should be included in subclause (4). I note that the Minister has on file a more extensive amendment to subclause (4), and the Liberal Party is prepared to support that amendment if the Minister can clarify the position I have highlighted and indicate that she is talking about a controlling body and a controlling authority each time that those things are referred to. That will provide consistency.

The Hon. BARBARA WIESE: I believe that the Hon. Ms Laidlaw's amendment would be made redundant should my amendment be successful, because it seeks to clarify the fact that we are in this provision referring to controlling bodies. My amendment makes other additions that clarify the points which are intended to be made in these provisions so that there can be no doubt as to what is intended. I believe that my amendment covers the Hon. Ms Laidlaw's concern and, should my amendment be successful, there would be no need for this amendment to be considered.

The Hon. DIANA LAIDLAW: I have re-read the Minister's amendment and, as I believe that it is more effective in achieving the refinements to which I alluded, I seek leave to withdraw my amendment.

Leave granted; amendment withdrawn.

The Hon. BARBARA WIESE: I move:

Page 43, lines 4 to 6—Leave out subclause (4) and insert new subclauses as follows:

(4) A controlling body established under section 666c of the principal Act before the commencement of this Act will be regarded as a controlling authority established under section 199 of the principal Act as amended by this Act.

(5) A controlling authority incorporated under Part XIX of the principal Act before the commencement of this Act will be regarded as a controlling authority established under section 200 of the principal Act as amended by this Act.

(6) The Minister may, on application by a council, in respect of the financial year 1988-89, permit the council to send accounts for the payment of rates to the occupiers of ratable land within its area (and not necessarily to principal ratepayers).

Amendment carried; clause as amended passed.

Clause 52—'Amendment of Electricity Trust of South Australia Act 1946.'

The Hon. BARBARA WIESE: I move:

Page 43, lines 10 to 19—Leave out subsection (2) and insert new subsection as follows:

(2) For rating purposes under the Local Government Act 1934 (whether or not the land is owned by the trust), the following are not ratable property—

(a) plant or equipment used by the trust in connection with the generation, transmission or distribution of electricity;

(b) easements, rights of way or other similar rights of property or of licence granted in favour of the trust in connection with the generation, transmission or distribution of electricity.

This is simply a technical amendment which is designed to ensure that there are no unintended consequences of this provision. We want to clarify beyond any doubt that we intend with this provision to preserve the *status quo.*

Amendment carried; clause as amended passed.

Remaining clauses (53 and 54), schedule and title passed.

The Hon. BARBARA WIESE (Minister of Local Government): I move:

That this Bill be now read a third time.

The Hon. DIANA LAIDLAW: I simply want to say a few words at the end of this saga, which I have not found an easy task in that I am representing the Shadow Minister in the other place. It has been somewhat more difficult and frustrating at times because we have been dealing with a variety of Bills and receiving advice from a wide range of sources, whether it be individual councils or the LGA. The advice from those sources has changed from time to time, as I understand has been the Minister's experience also. I have reflected, with some sense of exasperation, on that situation, particularly on occasions when I spoke during the second reading debate.

That exasperation was timely, but I also respect that it is difficult for a body such as the LGA, which represents 126 councils in this State, to try to appreciate and have on hand at all times during the consultative process a complete understanding of the operations of each council and how the provisions in a Bill or those proposed in amendments will affect councils in general or specifically. Whilst I have found this process difficult, I appreciate that it has not necessarily been an easy task for either the LGA or the Minister in dealing with the situation.

I am pleased we have reached the stage in this Chamber where the Bill is satisfactory as far as the Opposition and the Democrats are concerned. Certainly that position reflects the stand of the LGA. I am therefore confident that the Bill as it leaves this place is in the best interests of local government in this State. I respect that this is early days in regard to the fate of the Bill. I thank the LGA and councils generally for the amount of time and assistance they have provided the Opposition and the Government over some years in working on this Bill. I hope that we may be able to make greater progress in revising subsequent Bills so that, before the end of this century, we will have a modern and up to date Local Government Act.

The Hon. BARBARA WIESE (Minister of Local Government): I join the Hon. Ms Laidlaw in the remarks she has made concerning the various stages through which the Bill has progressed on its passage to this stage. I shared her frustration at various times along the way. It has been a

very difficult Bill to draft, primarily because so many different viewpoints have been put at different times during the course of discussions that have taken place on it. We should not let the moment pass without also reflecting on the very large degree of unaninimity there has been on many of the issues contained within the legislation. It should be borne clearly in mind that these provisions of the Local Government Act are probably the most important within the Act, certainly as they impact on a council's ability to manage its financial affairs. Any Bill that deals with the fundamental questions of money, management of money and power to raise revenue, will inevitably result in much discussion and controversy. There has certainly been considerable controversy on a very small number of issues within the Bill, and a large area of agreement.

It is a credit to all these people who have been involved in the process of discussion that so much consensus has been reached on what is probably one of the most far-reaching Bills of its kind yet to come before any Australian Parliament. I join the Hon. Ms Laidlaw in thanking members of the Local Government Association for being prepared to continue discussions on these matters right through the course of the past two years or so, even though views on various matters changed from time to time. It is important, whatever the outcome, that these channels of communication always be open and that all people with the responsibility of framing legislation of this kind maintain an open mind and continue their preparedness to discuss issues that might arise during the course of the debate or preparation of a Bill.

I particularly pay tribute to officers of my department who have devoted many hours, days, months and years to the numerous issues involved in the drafting of this legislation. Hundreds and hundreds of hours of research and preparation time have been put into the discussion papers and drafting of legislation before it reached this place. It has been an enormous task for all those involved and they deserve special credit for the role they have played. I agree also with the Hon. Ms Laidlaw that this is not the end of the debate because a number of issues have not been resolved to the satisfaction of the Government in this place. I anticipate that there will be a conference of managers to try to resolve or reach a compromise on a number of outstanding issues. With the goodwill that has been expressed during the debate in this place, I believe it will be possible for compromises to be reached that will at least be acceptable, if not welcomed, by all parties that will take an interest in the Bill.

Bill read a third time and passed.

STAMP DUTIES ACT AMENDMENT BILL

In Committee.

(Continued from 24 February. Page 3023.)

Clause 2—'Commencement.'

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

Page 1, lines 13 and 14—Leave out this clause and insert new clause as follows:

2. (1) Subject to subsection (2), this Act will be taken to have come into operation on 7 December 1987.

(2) Section 3 will come into operation two months after assent.

This was the subject of debate when the matter was before the Chamber prior to Christmas. It was agreed with the Democrats, at least, that the Bill should be retrospective to 7 December 1987. My amendment provides for that but also adds a new subclause (2), which has been inserted at the request of the Taxation Institute. Its effect is to allow persons a two month period after assent within which to lodge documents for stamping without criminal penalty. This will expressly ensure that no criminal liability will attach to a person for failing to comply with the law as it existed before assent.

The Hon. K.T. GRIFFIN: I know that, as Parliament rose on the last sitting day prior to Christmas, there was some concern on the part of the Government about this Bill and the way in which it should be handled because of the issues that had been raised during the course of the debate, largely resulting from a review of the Bill by the Taxation Institute. When the Bill went into Committee, the Government indicated that it proposed that the Bill have retrospective effect to 7 December 1987. That has created a number of problems, particularly for people who wished to enter into transactions which might be affected by either the Bill as it was introduced into this place or any amended Bill. I know from a number of legal practitioners who have spoken to me that they have had to contend with the wrath of clients when they have been unable to give advice as to what is the law. That is a particularly difficult position for any citizen to be in, not knowing what the law is, because a Bill of this nature is to be given retrospective effect.

When Parliament rose prior to Christmas, I put on record my concern about the retrospective operation of the legislation and I indicated that the Opposition would not support it. That is the position that I indicate now. It was the Government's announcement prior to Christmas of the retrospective effect of this legislation which caused considerable concern and inconvenience because no-one has known what the law may be during that intervening period.

Although on occasions taxing legislation has been declared to come into effect from the date when the Government has made an announcement as to the sort of scheme which might be the subject of that legislation, the fact is that, at least in this State, there has been a very high level of certainty about a Bill which has been introduced, the delay has not been very long and the issue has been resolved within a month. In any event, it has happened only on very rare occasions. So, I put on the record the concern of the Opposition about the retrospective operation of this legislation. Because of the uncertainty, and on the basis of indications to me by legal practitioners that their clients have been unable to move because they have not known what is the law. I cannot believe that the revenue would have been prejudiced by bringing the Bill into operation now.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: The problem is that Parliament makes the law in the written statute. I have made this point before: whenever Parliament makes a change to a law it involves more work for lawyers and I guess the Attorney-General and his Government have been prolific providers of work for the legal profession because of the number of Bills that they have introduced and passed through Parliament. I suppose in that respect one might say that the Attorney-General is the patron saint of the legal profession in respect of the volume of work that he has undoubtedly channelled in its direction through legislation.

The Hon. C.J. Sumner: How?

The Hon. K.T. GRIFFIN: The legislation that has been introduced always requires interpretation.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: The Attorney has this notion of dealing with other legislation to codify the law relating to sentencing. That in itself will create more work for the legal profession and the courts.

The Hon. C.J. Sumner: It is simple.

The Hon. K.T. GRIFFIN: It is not simple by any means.

The Hon. C.J. Sumner: It is more simple than it was.

The Hon. K.T. GRIFFIN: The Attorney knows that people are entitled to question the interpretation of any statute and, if it is not clear, they are entitled to take the matter to the courts. With taxing legislation, which is an impost upon the citizen, the citizen has a right to question the interpretation that might be placed on broad legislation and is entitled to accommodate his or her affairs according to what the law is and what can be discerned from the enactments of Parliament.

From what I have been told, I cannot believe that in this case there is any great cost to the revenue by deleting the retrospective operation of this legislation as proposed by the Attorney-General. If the Bill passes within a few days, I will see that it is assented to very quickly. I oppose the proposal. I must say that I am pleased that clause 3 of the Bill, if it passes Parliament, will no longer have retrospective operation. Clause 3 contains the penalty provisions of the Bill and it is inappropriate that they should have any retrospective effect.

The Hon. I. GILFILLAN: I indicate the support of the Democrats for the amendment.

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

That it be a suggestion to the House of Assembly that clause 2 be deleted.

The Committee divided on the motion:

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

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

Pair—Aye—The Hon. T.G. Roberts. No—The Hon. C.M. Hill.

Majority of 1 for the Ayes.

Motion thus carried.

Suggested new clause inserted.

Clause 3—'Penalty for not duly stamping.'

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

Page 1, line 15—After 'amended' insert:

(a) by inserting at the end of subsection (1) after paragraph *(b)* '(but the Commissioner may allow an extension of time in appropriate cases)';

(b) by striking out from subsection (1a) 'the period referred to in subsection (1)' and substituting 'the time allowed by or under subsection (1)';

and

(c) [the present contents of clause 3 then become paragraph *(c)*].

Clause 3 deals with the penalty for not duly stamping and amends section 20 of the principal Act. My amendment is to proposed new subsection (4) which will enable the Commissioner to allow an extension of time in appropriate cases.

Section 20 (1) provides that an instrument may be stamped without penalty where it was executed in South Australia within two months after its execution or, where it was executed outside South Australia, within two months after its receipt in South Australia or within six months after its execution, whichever period first expires. What that means is that, the moment that period expires, an offence has been committed. There is no power in the Commissioner to extend the time so far as the penal provision is concerned. If we have a simple agreement which might require a 20c duty stamp, or even a power of attorney which requires a $4 stamp, or even a transfer which requires stamping at *ad valorem* rates, the fact is that in many instances these are not stamped within the period. In many cases, it is inadvertently overlooked that something has to be stamped. In some cases the documents are held in a file until a settlement occurs, and that might run on for months.

At the moment, people merely lodge their documents with a late stamping declaration. In some instances a penalty may be imposed for late stamping, but there is no penal provision. No offence is created which would bring them before the court upon a prosecution being launched by the Crown. What I am trying to do is to provide that the Commissioner of Stamp Duties has a power to grant an extension of time in appropriate cases. I think that is appropriate. There is no point in saying, 'Look, there is a discretion as to whether or not we will prosecute.' The fact is that that is open to differing interpretations. The fact remains that an offence has been created if the two month period expires and the document has not been produced for stamping. An offence has been created. Then we depend upon the discretion of the Commissioner as to whether or not a prosecution would be launched.

I would like to take it back one step and say that, as at the present time, the Commissioner has power to grant an extension of time. If the extension of time is granted, no offence is committed. It seems to me to be quite appropriate. I understand that that situation applies in at least one other State. My attention has been drawn to a power to extend time in a similar situation in section 26 (3) *(b)* of the Queensland Stamp Act. It is reasonable and proper that the Commissioner has a discretion already and I would like to see that discretion remain rather than automatically many hundreds of people over a period of a year committing an offence and then waiting to see whether or not proceedings are to be issued.

The Hon. C.J. SUMNER: The Government opposes this amendment. One of the evils we are trying to attack in this area is the deliberate non-stamping of documents. There is in the Government's view no case for the granting of an extension of time. The documents should be stamped. That is the fact of the matter, and—

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Well, that is all right.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Well, they will have to get on with it, won't they!

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: We will see about that. The fact is that they ought to be produced in time. That is what we are suggesting in this legislation. We do not believe that that ought to be able to be altered at the exercise of a discretion by the Commissioner of Stamps. The Government's proposition makes it clear that the requirement needs to be met rather than leaving an opportunity for continuing representations for extensions of time. The provision that the honourable member seeks to insert would be inconsistent with existing provisions in stamp duty legislation and with similar provisions introduced in New South Wales and Western Australia.

Regarding the honourable member's point that this may apply in one other State, I am advised by the Commissioner of Stamps that the Commissioners responsible for stamp duty have met and that what is being proposed in the Government's Bill has been prepared after discussions with the other States to try to overcome what appears to be a problem with all stamp duties legislation.

The Government's proposition makes it quite clear that the deliberate avoidance of payment of stamp duty by not presenting documents for stamping cannot be accepted and that it is an obligation on parties who enter into agreements

to present their documents for stamping within the appropriate time.

The Hon. I. GILFILLAN: One assumes that the concern expressed by the Hon. Mr Griffin is covered by the option whether or not to prosecute, rather than what could be quite a cumbersome load on the Commissioner if a whole lot of people, for all sorts of reasons, want to snow that person down with applications for extensions. I can see that there will be occasions when, quite innocently, people will be caught in the trap and they will not be able to comply with the two month limit. However, I assume that the option will be there to prosecute or not prosecute. Is that correct?

The Hon. C.J. SUMNER: That is correct.

The Hon. I. GILFILLAN: That being the case, I indicate that the Democrats will not support the amendment.

The Hon. K.T. GRIFFIN: I am disappointed in that. It has been my experience in private practice that on many occasions, for perfectly innocent reasons, a document is not produced within the two month period. The Attorney-General is now saying that all those people will be liable to prosecution and that the Commissioner will then exercise a discretion as to whether or not a prosecution will be launched. I think that is a ludicrous proposition.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: It is all very well for the Attorney to say that. There are frequently very good reasons why some other document may be being sought from interstate; perhaps it may have been sent off to the U.K. or something like that, and will not come back, even within the extended period.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: It is all very well for the Attorney-General to say that. That is rather typical of this Government's attitude. It is the arrogant heavy hand of a Government which says, 'It is all right for us to delay as a Government in doing things and making decisions, but it is not all right for the citizen.' I am merely saying that there should be some power in the Commissioner to grant an extension of time.

The practice in this State for the last 20 or 30, or maybe more, years has been for documents, when they are stamped late, in some cases to attract a penalty. However, there is a time by which the period is extended. I do not see anything improper or unreasonable about that. All I am saying is that that means that all those people who inadvertently, or for some good and innocent reason, do not stamp documents within the two month period should not be subject to the threat of prosecution.

In relation to documents which are deliberately withheld from stamping, that is another matter. However, where there is a genuine reason for not having stamped a document within a period of time, then there should be the power to extend. I guess that the Attorney-General suffers from the problem that he always has people to run around and do things for him, whereas out in the private sector people must do things for themselves, and it is not so easy to ensure, that in a busy commercial life, the documents are all lodged on time. Therefore, I am disappointed that the Democrats will not support my proposition for some extension of time to be available through the Commissioner of Stamp Duties.

The Hon. C.J. SUMNER: I want to ensure that the matter is clearly on the record. The Government is saying that documents should be, or can be, stamped without penalty within two months after execution where they are executed in South Australia. I would have thought that two months was a fairly considerable period of latitude for this purpose.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: It may be a document relating to parties overseas, but I will come to that.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: No, but it may be that the last signature was that of an overseas party. Perhaps that is what the Hon. Mr Griffin is referring to, and that is the other point that I was going to make. Where the document is executed outside South Australia, it is within two months of its receipt in South Australia—so, it is not two months within execution—or, within six months after its execution, whichever period first expires. Therefore, once the document is received in South Australia, there is still the two month period within which to get it stamped. So, it is on a par with documents executed within South Australia or, if it was executed outside South Australia, there is a full six months within which to get the document back and to get it stamped in South Australia. That is not an unreasonable obligation to impose where it is quite clear that the law requires those documents to be stamped.

The Hon. K.T. GRIFFIN: There is the position where, if one sends a document overseas, if there are multiple parties, the provision means that, if the documents are not returned within six months of execution, every person who executed the instrument, or on whose behalf it was executed, is guilty of an offence. Therefore, you have people in South Australia who sign a document; it is then sent overseas for other signatures; and, for some reason, it does not come back within the six month period after it was executed overseas—that is, the last signature was obtained overseas. It really means that all the people who are left in South Australia and who executed the document on time will then be prosecuted.

If the Commissioner had power to extend the time in those sorts of circumstances, I would say that there is no problem. However, the worst possible position is that the parties in South Australia who executed an instrument, or on whose behalf it was executed, are liable to an offence if a document goes off-shore for further signatures and does not come back within six months after the last signature is received overseas. I think that is harsh and unreasonable.

Suggested amendment negatived.

The Hon. K.T. GRIFFIN: As the Hon. Mr Gilfillan has indicated support for the Government, in the circumstances of the numbers I decided that it was not appropriate to take up the time of the Committee in a formal decision. I move:

Page 1, line 21—leave out 'Penalty: $10 000' and insert:

Penalty:

(a) Where the duty chargeable on the instrument does not exceed $100 . . . $500;

(b) where the duty chargeable on the instrument exceeds $100 but does not exceed $2 000 . . . $5 000;

(c) Where the duty chargeable on the instrument exceeds $2 000 . . . $10 000;

The penalty provided is a maximum of $10 000. In his reply, the Attorney-General indicated that the question of penalty was a matter for the courts, which would take into account the extent of the duty that has been avoided. My point was that in some instances some documents require a 20c duty stamp and others a $4 duty stamp. On some other documents the *ad valorem* duty might be only a relatively small amount.

In those circumstances it seems to me that there ought to be graduated penalties, and my proposition is that, where the duty chargeable on the instrument does not exceed $100, the maximum fine ought to be $500; where the duty chargeable on the instrument exceeds $100 but does not exceed $2 000, the penalty should be a maximum of $5 000; and, where the duty chargeable on the instrument exceeds $2 000, the maximum penalty should be $10 000.

Honourable members must bear in mind that, in fixing penalties, the courts have regard to the seriousness with which Parliament views the particular offence and that the penalty fixed as a maximum is that which is indicated to the courts. While the amount of stamp duty that may not have been paid is small, it is quite likely that the courts will, nevertheless, look at the $10 000 maximum penalty and say, 'Parliament intended that this offence be regarded seriously, and we will fix a penalty that is relatively high, even if the duty that is otherwise chargeable on the instrument is relatively low.' I think it is quite appropriate to have a graduated set of penalties in this sort of legislation and for these sorts of purposes.

The Hon. C.J. SUMNER: The Government opposes the amendment. It is not normal practice in taxation or other legislation to provide for a range of penalties. It is normal practice—and the Government believes it ought to apply in this case—to set a maximum penalty, with the courts determining an appropriate penalty taking into account all the circumstances of the case.

The Hon. I. GILFILLAN: I indicate Democrat opposition to the amendment.

Suggested amendment negatived.

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

Page 1, line 22—After 'in relation to' insert:

'—

(a) an instrument executed, or brought into existence, before the commencement of this subsection;

(b) an instrument executed, or brought into existence, after the commencement of this subsection that relates to a transaction completed before that commencement;

or

(c) [the remainder of subsection (5) becomes paragraph *(b)*].'

The effect of this amendment is that the offence provisions to be inserted into section 20 of the principal Act will not apply to instruments executed or brought into existence before 7 December 1987. This amendment will ensure that the provision will not apply to persons who execute instruments before the commencement of the offence provisions. The Government did not intend to catch these people.

The Hon. K.T. GRIFFIN: That is consistent with new clause 2. While I have expressed concern about the retrospective effect of the legislation, I do not believe that what the Attorney-General has proposed is inconsistent with new clause 2. However, I raise a question in regard to my amendment: what is proposed by the Government with respect to instruments executed or brought into existence after the commencement of the subsection that relates to a transaction that is completed before that commencement? That is not dealt with by the Attorney-General in his amendment. I would have thought it was fair that there be some reference to that situation in the Attorney's amendment.

The Hon. C.J. SUMNER: The Government believes that the honourable member's proposition would provide the capacity for significant avoidance of the provisions in the immediate future. We believe that a clear cut commencing date is required, and we selected that clear cut commencing date namely, 7 December 1987, as the date of operation of the legislation.

The Hon. K.T. GRIFFIN: I have some difficulty with that position but, in the light of the Government's indication, I do not propose to move an amendment. As we will move into the area of requiring statements to be lodged in respect of certain transactions in relation to later clauses, it seems to me to be consistent that we make some exception with respect to instruments that may be brought into existence after a transaction has been completed where it is completed before the commencement of the legislation or, as now appears to prevail, before 7 December 1987. I would not have thought there was that much scope for avoidance in my proposition.

Suggested amendment carried.

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

Page 1, lines 27 to 33—Leave out paragraphs *(a)* and *(b)* and insert 'the defendant delivered the instrument or had it delivered into the possession of some other party, or an agent for some other party, to the instrument in the reasonable expectation that the other party would have it stamped'.

This amends proposed new subsection (6) of section 20, which provides a defence to a charge against this section if the defendant proves that he or she would not customarily have assumed responsibility for stamping the particular instrument and that he or she delivered the instrument into the possession of another party to the instrument, expecting it to be stamped. The Taxation Institute has argued that a custom does not exist in all cases and that an associated contract will often specify who is to stamp the document. After discussion with the institute, an amendment is proposed. This should alleviate much of the criticism in respect of the provision, but maintain consistency with the principles in the legislation that all parties to the instrument are primarily liable for payment of the appropriate stamp duty.

The Hon. K.T. GRIFFIN: The amendment is identical to the one I have on file, so obviously I will support it. It overcomes one of the problems I foresaw after it was drawn to my attention by the Taxation Institute with respect to the liability to produce a document for stamping. It seems that the amendment reflects normal commercial practice and therefore can be supported.

Suggested amendment carried.

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

Page 1, after line 33—Insert new subsection as follows:

(6a) The commission of an offence against subsection (4) does not affect the validity of the instrument in relation to which the offence was committed.

This amendment adds a new subsection to provide that the commission of an offence under subsection (4) does not affect the validity of the instrument in relation to which the offence was committed. A proposition exists that, if an instrument is chargeable with duty, is not produced to the Commissioner for stamping within the prescribed period and an offence is committed, the instrument itself is then tainted with illegality. I wanted to ensure that that question was put beyond any doubt at all. If an instrument is not stamped it cannot be used in evidence until it is properly stamped. That is a different issue and does not affect the validity of the document. My amendment would put the matter beyond doubt.

I know that it is arguable and that the Attorney in his reply said that he did not think it was necessary, but I suggest that there is some argument about it, that it certainly does not prejudice the revenue to put it in and does put beyond doubt the question of the validity of any document which might not be produced within the appropriate time and therefore the parties face at least the prospect of prosecution for an offence that has been committed.

The Hon. C.J. SUMNER: We will be reasonable and will not oppose the amendment, although I point out that Parliamentary Counsel does not think it is necessary.

Suggested amendment carried.

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

Page 2, lines 1 to 6—Leave out subsection (7).

We have had debates on this matter which relates to offences by members of the governing body of the body corporate. This is extensive because it applies to members of committees of management, of bodies incorporated under the Associations Incorporation Act, cooperatives, building

societies and friendly societies. If an offence is committed by the body corporate, every member of the governing body is liable to the same penalty unless it can be proved that he or she could not, by the exercise of reasonable diligence, have prevented the commission of the offence by the body corporate. That will be much more applicable now where an offence is committed for any late stamping of a document. It seems that in those circumstances it is unreasonable.

I can see that in certain circumstances of tax avoidance it is not a matter which ought to be treated so lightly. In the circumstances of this section, I have difficulty with the clause. We have argued about the question of whether it is a reverse onus or otherwise; I have argued that it is and the Attorney that it is not. Maybe the battle on that issue is to be left to another day. For the purposes of this debate and in the light of the provisions which we have already passed, my amendment to leave out subsection (7) is appropriate.

The Hon. C.J. SUMNER: The Government opposes the amendment. As the honourable member pointed out, the matter has been debated on previous occasions and has generally come to be accepted as an appropriate formula when dealing with bodies corporate to ensure that the members of the governing body of the body corporate cannot escape liability where they have not in fact given adequate attention to the business of the corporation and where they have not exercised reasonable diligence to ensure that offences are not committed by the body corporate. It seems that a clause of this kind is important if one is to ensure that bodies corporate comply with the law.

The Hon. I. GILFILLAN: I am not as strongly persuaded as the Attorney-General appears to be that this is an essential clause in this matter. It strikes me that the penalty for a body corporate if found guilty is reasonably substantial. I indicate that I will support the amendment, but before making it an absolutely firm decision, I am interested to hear whether the Attorney has some concern that, if this does not apply, the benefit to a body corporate avoiding late payment would cost the Government such massive amounts of money that it feels it must pursue each person. It seems to me that, in some degree, the members of a governing body can quite reasonably be excused for not paying day-to-day attention to the ordinary running of a corporate business. I suspect that this gets too pernickety to chase each individual member of a governing body down the same burrow.

The Hon. C.J. SUMNER: I am not sure on what basis the Hon. Mr Gilfillan has decided that this is an appropriate time to take a stand on this matter. As I indicated in my second reading reply, the Parliament included a clause such as this in the Financial Institutions Duty Act and the Tobacco Products Licensing Act, and it is quite common in other non-taxation legislation in which the Parliament seeks to ensure that members of a body corporate take appropriate responsibility for the actions of that corporation and cannot hide behind the corporate veil with respect to their criminal liability. That is what the Hon. Mr Griffin's amendment does. It provides for the corporate veil to apply to criminal liability.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: That is right, but members of companies and shareholders have limited liability or attain limited liability by incorporation, so they are not personally responsible for debts incurred by the corporation because of that limited liability. Provided that they have behaved honestly and diligently, they can escape any personal responsibility for debts incurred by the company. In other words, the shareholders, if they are directors, and directors have no liability to creditors beyond the paid-up capital of the company. I do not see why that limited liability ought to apply to a criminal situation. Their liability is already limited by the act of incorporation. Why should directors have their criminal liability limited because they happen to be members of a corporation. I do not think that that is acceptable.

The Hon. K.T. Griffin: If you want to affect directors, you just provide that directors of a company shall be guilty of an offence for doing X, Y and Z.

The Hon. C.J. SUMNER: It seems to the Government that the corporate veil in a criminal matter should not be drawn so conclusively and that individual members of a company should be responsible for the actions of a corporation unless they can establish that they acted with diligence and reasonableness with respect to the matter. That is what this particular clause provides, and it is common in State taxation legislation.

The Hon. K.T. Griffin: Not common in the past five years.

The Hon. C.J. SUMNER: I am not sure about that. That is the position. It is now common in legislation and has been, in my view, for some time.

The Hon. I. GILFILLAN: I realise that it has been used in other pieces of legislation. It is a matter of trying to measure the degree of offence that is involved. The offence is the penalty of late lodgment or failure to lodge within a certain period. That is not necessarily a criminal act unless there has been some conspiracy to do it over some time. I do not see that in the same category as what could be described as deliberate failure to pay FID, which was one of the examples that the Minister gave. There may be a certain degree of inconsistency. As I understand this measure, the penalty is high but the offence is the failure to comply with certain requirements in a set period. The offence is not necessarily a deliberate attempt to avoid paying stamp duty.

The Hon. C.J. Sumner: That's what I am talking about.

The Hon. I. GILFILLAN: This is purely a failure to lodge a document in two months. You will wham every person with this. It is an awful lot of bureaucracy.

The Hon. C.J. Sumner: What about people who conceal documents to avoid taxation?

The Hon. I. GILFILLAN: You are assuming all that. The Democrats will support this amendment.

Suggested amendment carried; clause as amended passed.

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

Clause 4—'Objections to, and appeal against, assessments.'

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

Page 2, lines 7 to 35—Leave out this clause and substitute new clause as follows:

4. Section 24 of the principal Act is repealed and the following section is substituted:

24. (1) A person who is dissatisfied with an assessment or decision made by the commission under this Act may within 30 days after the date of the assessment or decision—

(a) object to the assessment or decision by forwarding to the Treasurer a detailed statement of the grounds of the objection;

or

(b) appeal to the Supreme Court.

(2) The Treasurer may, for proper cause—

(a) extend the time for making an objection under this section;

(b) allow amendment of the statement of grounds of objection.

(3) After consideration of an objection, the Treasurer may confirm, vary or rescind the assessment or decision.

(4) Where a person is dissatisfied with a decision of the Treasury under subsection (3), the person may, within 30

days after receiving notice of that decision, appeal to the Supreme Court.

(5) Upon an appeal under this section, the Supreme Court may—

(a) allow amendment of the grounds of appeal;

(b) confirm, vary or quash the assessment or decision as it thinks just;

(c) make such incidental or ancillary orders as it thinks necessary or expedient.

(6) An obligation to pay duty or a right to recover duty is not suspended by an objection or appeal.

(7) If an assessment is altered upon an objection or appeal, a due adjustment must be made and, where the assessment is increased, further duty becomes payable in accordance with the increase and, where the assessment is decreased, the Commissioner must refund any amount overpaid together with interest on that amount.

(8) Interest payable on an amount refunded under this section will be calculated from the date of payment of the duty on the assessment at the prime bank rate.

(9) In this section—'prime bank rate' means the rate adopted by the State Bank of South Australia as its prime lending rate.

Clause 4 amends section 24 of the principal Act. Section 24 relates to dissatisfaction with the assessment of the Commissioner and makes provision for objections and appeals. What the Bill seeks to do is certainly acceptable; it is better than what is there at present, but for quite some time I have held the very strong view that we ought to endeavour to ensure that there is a consistent procedure for objections and appeals contained in the State's taxing legislation.

My amendment seeks to bring the Act into line with some of the more recent taxing legislation which provides a different mechanism from what might be regarded as archaic procedures referred to in the present section 24. Some of the defects in section 24 include the requirement to pay money up-front, even a substantial amount, before an entitlement to appeal. This amendment seeks to set out the appeal mechanism and not require as a condition of lodging the appeal the payment of duty, but it continues the obligation to pay duty and provides for the Treasurer to continue recovery procedures even while the appeal is being heard. That is consistent with the provisions under the Federal income tax legislation and, as I recollect, it is also consistent with the business franchise legislation, the financial institutions duty legislation, and even payroll tax legislation. There does not appear to be any reason why the stamp duties legislation ought not to be brought up-to-date.

The difficulty with payment of duty in advance is that a very substantial assessment may be issued by the Commissioner of Stamps, and that the parties can be caught totally unawares by that assessment. They may not be in a position to be able to raise a large amount of money within a very short period of time, 21 days, after the assessment is issued, and therefore may be prejudiced in pursuing what they regard as a wrong assessment by the Commissioner.

I have very great sympathy with persons who are faced with that dilemma, and I think that the fair and equitable provisions which I have got in my clause 4 will solve that problem, whilst not prejudicing the revenue. It allows the grounds of appeal to be amended, upon application, by the Supreme Court. It does not depend upon the Treasurer lodging a statement of the facts upon which the Supreme Court can make its judgment. It is solely a matter which is within the initiative of the taxpayer.

It provides also for interest to be payable on any amount which is to be refunded. It sets that amount by reference to the prime bank rate adopted by the State Bank of South Australia as its prime lending rate. It does not leave open to gazettal by the Minister from time to time an interest rate which might be very much lower than what the prime rate may be. After all, interest on unpaid stamp duty is payable to the Treasurer at a high rate and there seems to me to be no reason why equity should not be done and both parties be treated equally. So, my amendment will update considerably the appeals mechanisms within the Stamp Duties Act and will ensure both equity to the taxpayer and no prejudice to the revenue.

The Hon. C.J. SUMNER: The Government opposes the amendment relating to the objection and appeal provisions, not because it does not think that the matter needs examination at some stage. In fact, as I indicated in my second reading reply, the Taxation Institute has submitted a proposal covering a wide range of matters which, in fact, were similar to a submission prepared for Western Australia.

The proposal was to adopt the standard procedure across all State taxation Acts with some consistency between States. There has not been adequate time to review these matters, and it is suggested that these objection provisions should be considered as a separate issue, and any attempt to substantially modify the procedures relating to objections and appeals in this Bill, without consideration of the impact on the whole range of State taxation legislation, would seem to be not entirely satisfactory.

So, the Government intends to consider the proposal submitted by the Taxation Institute and examine it in the context of an objection appeal procedure across the range of taxation legislation. That seems to the Government to be a preferable course rather than deciding that this procedure should be followed at this stage in this Act. I would query instantly whether it is appropriate that the Supreme Court should deal with these matters. You might be talking about $10.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: Well, you may be. You may be talking about $10. In practical terms, I do not suppose that anyone would launch an appeal over that sort of amount, but—

The Hon. K.T. Griffin: Why have you got the Supreme Court in every other tax legislation?

The Hon. C.J. SUMNER: We agree that it needs examination. I would have thought the District Court is the court that is now being established to hear these sorts of administrative-type appeals, and that it would probably be more appropriate for the matters to be dealt with by them. But that is just one minor issue that I have picked up as a result of examining this amendment. It is for a very limited—

The Hon. K.T. Griffin: A bit of a red herring.

The Hon. C.J. SUMNER: No, it is not, because the matter does need to be considered. It would seem odd that the Supreme Court, which has been trying to see its role as an appeal court and dealing with the most important issues on a trial basis involving substantial sums of money, should all of a sudden have visited upon it the capacity to deal with sums of money that might be more befitting the small claims court than the Supreme Court—but that is just one issue. I think it is better that the matters be dealt with looking at an appropriate objections and appeals procedure across the whole range of taxation legislation. The Government intends to do that so as to respond to the proposition put forward by the Taxation Institute and so as to make it, in so far as it is possible, standard across the taxation Acts and with consistency between the States. The Commissioner of Stamps says that he would hope to do it during the next financial year. So, there is a proposition: the Government will examine the issues but we do not think it should be inserted in this Act without consideration of the broader ramifications.

As to the appropriate interest rate, which the honourable member has incorporated in his amendment but which is also referred to in the Government Bill, the dispute there

is whether the Minister should fix the rate of interest or whether it should be fixed specifically by reference to the prime bank rate as adopted by the State Bank of South Australia from time to time. The Government believes that it is appropriate for the Minister to fix a rate which can then be applicable over a period of time. Obviously, if there are permanent movements in interest rates, then the rate can be adjusted up or down by the Minister. But, as the honourable member would know, there are fluctuations in interest rates on a quite regular basis—or there have been certainly in the past few years—and the Government believes that it is better for the Minister to fix a rate which can be applicable over a period of time instead of all the time having to relate back to the prime bank rate, which may change on a monthly basis.

The Hon. K.T. Griffin: What is the problem with that?

The Hon. C.J. SUMNER: Well, you have to change the interest rate. You have to ensure that at all times you know what the interest rate is. It changes regularly. It seems better to have an interest rate which is fixed but changed if there is a permanent change in the interest rate. If it is bobbing up and down over a period of time, then it seems to the Government that it is better to fix a rate which reflects those variations. If there is a permanent increase which looks as though it will be sustained in the interest rates then you proclaim a new rate. You do not do it every time there is a blip up or a blip down in the prime bank rate.

The Hon. I. GILFILLAN: It seems to me that a productive debate has just ensued, and the Democrat's best role is to oppose the amendment. I think that the Hon. Trevor Griffin has extracted from the Government an undertaking to address the issues, and it seems inappropriate for us to support an amendment which the Government proposes in this area at this time.

The Hon. K.T. GRIFFIN: That is disappointing, but not altogether unexpected. It is an important issue.

The Hon. C.J. Sumner: You always say you are disappointed.

The Hon. K.T. GRIFFIN: I am always disappointed when I lose something that is patently fair and reasonable.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: They can go there now. What the Attorney-General has been trying to do is draw a red herring across the path.

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: The real problem with this, of course, is that I have never known Governments to be generous with the interest rates payable on moneys which they have to refund to the taxpayer or to the citizen. The concern I have with the interest rate aspect of the Attorney-General's response is that it is less likely to be changed on a regular basis when the interest rates are going up and the proclaimed interest rate is low. I just think that there is a terrible inertia when it comes to giving something back to the hard pressed taxpayers of South Australia, and that is why I think that the prime rate would be a more appropriate way to go. Given the availability of computers these days, I would have thought it was not too difficult to press a button.

The Hon. I. Gilfillan interjecting:

The Hon. K.T. GRIFFIN: It would not be too difficult to press a button and get the answer without too much brain power being used. But it is not bogged down in all the other stuff; it is part of my proposal for reviewing the whole area of appeals. I will not call for a division if I lose on the voices. I have highlighted the issue. I think it does need attention. It has been around for at least five years, not just because of the Taxation Institute, but I know for a fact that it has been around and it is a reform which is long overdue. I would hope—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: I tried to. We had it well on the way. I think what is needed here is a Treasurer who is interested not only for the sake of revenue but also from the point of view of equity. If the Treasurer can be persuaded to give some attention to this issue, I hope it can be resolved even earlier than the next financial year. If I lose on the voices, I will not call for a division.

Suggested amendment negatived; clause passed.

Clause 5—'Instruments chargeable as conveyances operating as voluntary dispositions *inter vivos*.'

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

Page 2, lines 37 to 45—

Page 3, lines 1 to 16—Leave out all words in these lines and insert 'by striking out paragraph *(e)* of subsection (5) and substituting the following paragraph:

(e) a transfer of property to a person who has a beneficial interest in the property by virtue of an instrument that is duly stamped, where—

(i) the beneficial interest arises under a trust of which the transferor is a trustee;

and

(ii) (A) the transferor or some other trustee or trustees of the trust obtained his or her interest in the property under one of the other paragraphs of this subsection (except paragraph *(d)*); or

(B) the transferor or some other trustee or trustees of the trust obtained his or her interest in the property by virtue of an instrument duly stamped with *ad valorem* duty;.

This clause amends section 71 of the principal Act and is proposed as a response to the decision in the *Commissioner of Stamps v Softcorp Holdings Pty Limited.* The problem relates to subsection (5) *(e)* which gives an exemption from stamp duty for a transfer of property to a person who already has the beneficial interest in the property by virtue of a duly stamped instrument.

The effect of the Softcorp case is that, if the transferee can show any beneficial interest in the property, the exemption will apply, for example, a simple instrument of appointment of a person as the beneficiary of trust property will do. This approach is unacceptable. The State Taxation Office considered that an exemption would apply only if the person had the whole of the beneficial interest in the property, usually by virtue of an instrument stamped with *ad valorem* duty. The proposed solution is to introduce a system of credits so that duty would be chargeable on a transfer to a beneficiary as if the whole of the property was being transferred and then allowances made for any duty previously paid on the creation of any earlier interests.

The Taxation Institute has argued that this approach would affect the incidence of stamp duty in many cases that previously would not have been affected by subsection (5) *(e)*. The initial response of the Government was to propose further amendments to section 71 of the principal Act. However, this led to the need to include a number of exemptions to the proposed new provision. Accordingly, a new approach to the Softcorp case is proposed. Basically, this approach will 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).

This is a satisfactory result to the Government, as it ensures that, in appropriate cases, *ad valorem* duty is collected at least once unless an exemption can be obtained under another provision. I believe that the Taxation Insti-

tute considers that this approach is far preferable to the provision presently in the Bill. I commend the amendment to the Committee.

The Hon. K.T. GRIFFIN: I am prepared to support the amendment, which really demonstrates a considerable turnaround with respect to this clause.

The Hon. C.J. Sumner: It is reasonable.

The Hon. K.T. GRIFFIN: I am not criticising it. I am just saying that it represents a very substantial turnaround, and it eliminates all the problems which I addressed during the second reading and which have been the focus of comment by the Taxation Institute. My recent discussions with the Taxation Institute indicate that generally the amendment is much more acceptable. It certainly has none of the problems of the earlier provision (that is, the provision in the Bill). For that reason, I can support it.

There are all sorts of problems with calculating proportionate parts of stamp duty paid on previously stamped instruments. All sorts of questions arise which I think would have unnecessarily complicated the issue. Therefore, I think that this is a better way to deal with it. I draw attention to one matter that was drawn to my attention, that is, that in new paragraph (ii) (A) there is reference to the transferor or some earlier trustee or trustees.

The Hon. C.J. Sumner: It provides 'some other trustee'.

The Hon. K.T. GRIFFIN: In the draft which I had and which must have been an earlier draft, it was 'some earlier trustee', but the suggestion by the Taxation Institute which I took up with Parliamentary Counsel was to change it to 'some other trustee'. If that is in there now, I am happy with it.

Suggested amendment carried; clause as amended passed.

Clause 6—'Exemption from duty in respect of a conveyance between husband and wife.'

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

Page 3, line 33—Leave out 'two' and insert 'five'.

This clause deals with an exemption from duty in respect of a conveyance between husband and wife. I support the clause generally. I raised a number of issues during the second reading which have been the subject of comment by the Attorney-General in reply and I am now satisfied that the structure of the proposed new section is appropriate. One matter that concerns me in the definition of 'spouses' is the inclusion of persons who have been cohabiting continuously as *de facto* husband and wife for at least two years before execution of the instrument in respect to which an exemption is claimed under this section. I have a personal objection to the recognition of *de facto* spouses in legislation such as this, but recognising that the concept of putative spouse or *de facto* spouse has been recognised in a variety of other pieces of legislation, I suspect that my personal view has no chance of prevailing. It is therefore appropriate, I suggest, to ensure that as far as possible there be consistency in legislation if *de facto* or putative spouses are to be recognised.

As the Family Relationships Act defines a putative spouse by reference to a period of five years cohabitation, with some other exceptions or variations, the period of five years is more appropriate in the context of this clause than is two years. I therefore seek to replace the word 'two' with 'five'.

The Hon. I. GILFILLAN: I indicate Democrat support for the amendment as it is a reasonable one. Two years could be the subject of a contrived *de facto* relationship in so far as stating that a deliberate attempt was made at a relationship. I accept the other part of the Hon. Trevor Griffin's argument that it seems to be a good deal less than the time allowed in definitions dealing with a *de facto* relationship in other legislation.

The Hon. C.J. SUMNER: I thank members opposite for their concern about the revenue, so amply displayed by their attitude to this amendment. It is not completely consistent with their attitude to revenue on other matters. However, the numbers being as they are, the Government does not insist on this point.

The Hon. I. Gilfillan: Explain why it is suddenly two years.

The Hon. C.J. SUMNER: We are trying to be considerate to the people of South Australia. The proposition by members opposite will achieve a limiting of the concession available relative to that which would be available if *de facto* spouse is drawn at five years of cohabitation.

The Hon. I. Gilfillan: What about consistency in legislation? It changes from one Bill to another.

The Hon. C.J. SUMNER: It was two years for something else.

The Hon. K.T. Griffin: Not in South Australia.

The Hon. C.J. SUMNER: It is two years in New South Wales and Victorian tax legislation. Parliamentary Counsel is of the impression that it is two years in another South Australian Act, but I cannot recall it at present. I commend members for their diligence in protecting the revenue and, in the light of the numbers, I will not continue to argue for the original proposition of two years.

Suggested amendment carried.

The Hon. K.T. GRIFFIN: My question relates to new subsection (4). The Committee has already passed amendments moved by the Attorney that the Act will be taken to have come into operation on 7 December 1987. Will the Attorney indicate whether or not proposed subsection (4) is in any way different from the intention to have the legislation coming into operation from 7 December?

The Hon. C.J. SUMNER: The answer is 'No'. Any duty that has been paid since that time will be refunded.

The Hon. K.T. GRIFFIN: My other question relates to group reconstructions. The Attorney will remember that I raised the question of whether this sort of concession might also be available for corporate and group reconstructions. His reply was along the lines that corporate reconstruction is not addressed in this Bill. My recollection is that he said that applications for concessions will be dealt with on their merits. New South Wales and Victoria have issued guidelines, but these have not been incorporated in the legislation, other than in New South Wales, in 1987, authorising the Minister to give a concession at his discretion. Can I get from the Attorney some confirmation that there is a practice of granting such concessions or exemptions for group reconstruction based upon the merits of each case? Can the Attorney indicate what the guidelines are for the making of those concessions?

The Hon. C.J. SUMNER: The Government does not intend to amend the legislation to provide for exemptions in the case of corporate reconstruction. Apparently in New South Wales the legislation says that the Minister can give a concession at his discretion. In Victoria there are apparently some guidelines with respect to corporate reconstructions, but they are not incorporated in the legislation. I assume that that is done by *ex gratia* payment. The *ex gratia* payment is the route followed in South Australia, but the Government prefers not to have any general guidelines and to deal with each case on its merits.

The Hon. K.T. GRIFFIN: If there were any cases where such concessions were granted in the past two years, is the Attorney-General able to indicate in what circumstances those concessions were granted?

The Hon. C.J. SUMNER: There was one *ex gratia* payment about 12 to 18 months ago in relation to the GMH reconstruction.

The Hon. K.T. Griffin: I take it from that that, if there is a group reconstruction in circumstances which might merit concessions, an application must be made to the Minister.

The Hon. C.J. SUMNER: Application must be made to the Treasurer, and he would consider whether an *ex gratia* payment is appropriate—basically a book entry—and what would have to be established is that the reconstruction was in the public interest by being a significant benefit to South Australia.

Clause as amended passed.

Clause 7—'Insertion of new s.71e.'

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

Page 3, line 46—Leave out 'or business asset' and substitute 'or the goodwill of a business'.

Page 4, line 8—After 'conveyance' insert 'or as if it were a conveyance'.

The first of these amendments, which are related, is designed to remove the words 'or business asset' which were the subject of major criticism by the Taxation Institute and raised questions that the original provision in the Bill levied a sales tax. These amendments clarify that situation by altering the terminology.

The Hon. K.T. GRIFFIN: In principle, I support this amendment. Again, it represents quite a significant change in the ambit of the clause. I argued quite strongly, as did the Taxation Institute that, by leaving in the reference to 'a business asset' in new section 71e, that was likely to result in a broadly based sales tax, or a tax akin to a sales tax, which would be likely to be challenged as unconstitutional anyway. More particularly, it would result in quite dramatic increases in costs to consumers because, in every instance where a business sold an asset in the course of that business, technically, duty was liable to be paid on the amount of the transaction.

The Hon. I. Gilfillan interjecting:

The Hon. K.T. GRIFFIN: I did, that is right. I have made the point—

The Hon. C.J. Sumner: He's trying to take the credit for it.

The Hon. K.T. GRIFFIN: That is the reason why—

The Hon. I. Gilfillan: You're entitled to refer to your second reading explanation. I will give you applause for it. Don't go through it all again.

The Hon. K.T. GRIFFIN: The Hon. Mr Gilfillan does not recognise that some explanation has to be given. The Attorney-General's explanation was very superficial and it needs to be amplified a little to demonstrate the extent to which he and the Government have changed on this issue. I am not rubbing it in: I am trying to identify the change which has been made. A lot of people read *Hansard* and they are entitled to know the basis for this change.

I support this amendment. The Taxation Institute still raises questions about the reference to 'a business' and what that may really mean. I think that its argument has some merit, because 'business' is not defined. As I said during the second reading debate, it can be capable of some fairly broad interpretations. I understand that in Queensland it is defined as 'the activity of carrying on the business' and in New South Wales it is used in the context of the goodwill of a business.

However, at least there has been a change to the provision and I am prepared to accept it. However, we should refer to the business or the goodwill of the business situated in the State because, under the provisions of the Government Bill, that is where the change in interest ought to be liable to duty. While I support the thrust of the Government's amendment, I want to ensure that it is defined as a business or the goodwill of a business situated in the State and that is the import of my amendment. To the extent that I want to deal with that matter during the course of consideration of this part of the Bill, I will have to be guided by you, Mr Acting Chairperson, as to the way in which we deal with it.

The Hon. I. GILFILLAN: It seems to me that there is little dispute with the amendment to leave out 'or business asset' and substitute 'or the goodwill of the business'. It appeared to me that the Hon. Trevor Griffin was speaking in favour of that amendment. He can correct me if I am wrong, but I understood him to be speaking in favour, reflecting that this amendment did respond to criticism by the Taxation Institute of Australia and to some comments that he made in his second reading speech. So, it appeared to me on listening to the debate that the Opposition and the Government were of a mind that this amendment to delete 'or business asset' and replace it with 'or the goodwill of the business', was jointly supported.

The Hon. K.T. Griffin: I want to go further and identify the business or the goodwill of a business situated in the State.

The Hon. I. GILFILLAN: I see. I was on the wrong sheet. I now understand. I have two sheets of amendments and you can understand, Mr Acting Chairman, that it can be perplexing.

Suggested amendment negatived.

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

Page 3, line 46—leave out 'or business asset' and insert 'or the goodwill of a business, situated in the State'.

Suggested amendment carried.

The Hon. K.T. GRIFFIN: Before I move my next amendment can I make one other point in relation to page 3. In relation to the ownership of a legal or equitable interest in land, the Taxation Institute made the point that you can only change the ownership of a legal interest in land through a transfer which has to be produced for registration and which must be stamped before registration. There is validity in the point, but I am not moving an amendment to pick up that issue. It suffices to have the matter noted. I would like to think that, if there is a transfer of the ownership of a legal interest in land, that still only requires the production of the transfer which is to be registered at the Lands Titles Office and that no other documentation, other than the contract for sale and purchase if it is not vacant land, should be required to be produced.

The Hon. C.J. SUMNER: We agree with that.

The Hon. K.T. GRIFFIN: I have just raised a question, and the Attorney-General has indicated that he agrees with the proposition which I was putting, namely, that no other documentation is required where there is a transaction involving a change in ownership of a legal interest in land. So, that is sorted out. I move:

Page 4, lines 1 and 2—Leave out subparagraph (iv).

New section 71e provides for the levying of stamp duty in certain circumstances where there is a transaction resulting in the change in the ownership of a legal or equitable interest in certain properties. We have got land, business, or the goodwill of a business in the State and an interest in a partnership. They are specific. The Government, through this legislation, is saying that those transactions are liable to duty. That is clear for everyone, and it is debated in the Parliament.

The Government also wants with this Bill to say, 'We want to be able, by regulation, to include other property. Therefore, if there is a transaction which results in a change in the ownership of other property, and we think that there

is an avoidance scheme in operation, we want to be able to provide by regulation only that that is property which is also caught.'

Everybody knows that I am very strong in my objection to that sort of taxing procedure—that if there is other property which ought to be the subject of stamp duty and which is not already included specifically in subparagraphs (i), (ii) or (iii) of paragraph *(a)*, it ought to come back to the Parliament. It is the Parliament which ought to fix the parameters for the levying of stamp duty. It is a tax, and there is an obligation, where taxes are levied, for the citizen to know precisely what the Parliament has decided, and it ought not to be left to regulation.

All taxing measures ought to be precise, and the taxes which are levied ought to be levied by an Act of the Parliament on property determined by the Parliament. I have a very strong objection to allowing the ambit of this clause, which will extend the range of property upon which duty may be assessed, to be undertaken by regulation.

The Hon. C.J. SUMNER: This power to extend the nature of the interests that can be covered by this section is considered to be necessary in case there are other interests beyond land, business or an interest in a partnership to which the section should apply. New South Wales legislation includes such a power, not that I necessarily consider that to be a persuasive argument, but just something to be weighed in the balance in determining whether to accept this amendment. The balance tips towards opposition of the amendment.

The Hon. I. GILFILLAN: I thank the Attorney-General. He really did remove any uncertainty I had in my mind: as soon as he fixed it to New South Wales, I immediately went into opposition to his position. To treat the matter a little bit more seriously than that, we have had the precedent of indicating to the Government and the Parliamentary Draftsman that the Democrats are very nervous about supporting these types of clauses. I accept that with a matter as significant as this in taxation the detail should be spelled out, and if there is to be any change in the detail it is not a difficult procedure to bring through a minor Bill of alteration. I think that that is the proper course to follow. If the Government cannot outline at this stage what are the sort of transactions upon which it wants to exact stamp duty, it ought to leave them untaxed until it can put up the detail to Parliament. In that case, I am sure we would give it serious and probably favourable consideration. It is my intention to support the amendment.

The Hon. C.J. SUMNER: The Government was not relying on the New South Wales position just because we thought that it had any special merit but because it was the proposition that came forward from the Taxation Institute. The Hon. Mr Griffin has been enthusiastic about propositions put forward by the Taxation Institute except, of course, where it has suited him not to be, and this apparently is one such case. The Commissioner of Stamps advises me that they were questioned on this issue in relation to the earlier amendment by the Taxation Institute and, apparently, the question was asked: 'Why can't you do what is done in New South Wales?' That is what we chose to do, so it is not a matter of following the position in New South Wales as such—it is a matter, apparently, of the Taxation Institute suggesting that the New South Wales formula was the appropriate one to follow, I am advised.

The Hon. K.T. GRIFFIN: It is in the Government Bill and the Taxation Institute did not see the Bill until after it had been introduced, so you cannot blame the Taxation Institute for that. While I welcome the assistance which the Taxation Institute has given on the examination of this legislation, I have not followed everything which it has put, and I have added a bit of my own. Everybody knows that I have a very strong view about obligations being placed on citizens by governments through regulation, and this is one of those. I am very pleased that the Hon. Mr Gilfillan shares the view which I hold about the undesirable aspect of a taxing measure containing a provision which, in effect, enables the ambit of the legislation to be broadened by regulation without a specific decision of both Houses of Parliament.

The Hon. C.J. Sumner: You have an amendment on file to do the same yourself.

The Hon. K.T. GRIFFIN: Yes, but what the Attorney overlooks—

The Hon. C.J. Sumner interjecting:

The Hon. K.T. GRIFFIN: Come on! The Attorney-General distorts it. The Government can reduce; it can offer concessions; or it can make *ex gratia* payments. It can do all those things by executive act. It can make concessions to the taxpayer or the citizen. A later amendment enables the Government to do that by regulation in relation to other areas from which it might withdraw, in effect from the taxing area, but that is a different matter. There is an obligation to pay the tax. The Government is entitled to withdraw from it. On the other hand, if the obligation is not there, there is no reason, I would suggest, for a Government by regulation to extend the ambit of the obligation on the taxpayer. I see these matters as being quite consistent and in no way inconsistent.

The Hon. I. GILFILLAN: The Democrats remain firm in their earlier statement of support for the amendment.

Suggested amendment carried.

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

Page 4, line 8, after 'conveyance' insert 'or as if it were a conveyance'.

This is a tidying-up amendment relating to terminology.

The Hon. K.T. GRIFFIN: I support the amendment. It is consistent with the terminology in the schedule and with other parts of the Stamp Duties Act.

Suggested amendment carried.

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

Page 4, lines 9 and 10, leave out subsection (2) and insert new subclause as follows:

(2) This section does not apply to any of the following transactions—

(a) the appointment of a receiver or trustee in bankruptcy;

(b) the appointment of a liquidator;

(c) a compromise or arrangement under Part VIII of the Companies (South Australia) Code;

(d) a conveyance of property for nominal consideration for the purpose of securing the repayment of an advance or loan, not being land subject to the provisions of the Real Property Act 1886;

(e) any other transaction of a prescribed class.

This amendment inserts new subsection (2). Subsection (2) presently provides that the regulations may exclude transactions or classes of transaction from the operations of the section. The amendment lists various classes of transaction that can be excluded from the outset and, indeed, have always been intended to be excluded.

The Hon. K.T. GRIFFIN: We are both moving along in the same direction. There are two differences between my proposed amendment and the Attorney-General's amendment. The Attorney-General's amendment does not apply to the appointment of a receiver or a trustee in bankruptcy, to the appointment of a liquidator, to a compromise or arrangement under Part 8 of the Companies (South Australia) Code, a conveyance of property for nominal consideration for the purpose of securing the repayment of an advance or loan not being land subject to the provisions of

the Real Property Act 1886, or any other transaction of a prescribed class.

My amendment has the same first three exceptions, and then I depart from the Attorney-General in respect of two matters; the creation of a mortgage, charge or lien over property or the transfer of any interest in property by way of security. It seems to me that that is a more appropriate form of words. It is extended to all property which might, in effect, be a common law mortgage, and I think that there is no reason at all to limit the scope of the exception to only that property which is not land subject to the provisions of the Real Property Act.

I also include the release or termination of an option for the purchase of property. It seems to me that that is an appropriate provision to include. I do not think that that is in any way prejudicial to the revenue and, again, it is consistent with some legislation in other States. So, I would prefer my form rather than the Attorney-General's.

The Hon. I. GILFILLAN: When looking at and trying to interpret this matter, and not being familiar with the significance of the Real Property Act 1886, it would be very difficult for me as a humble member of this Committee to judge the pros and cons of the two amendments. Therefore, I will be looking for some interpretation from the Attorney on this. The advantages of the wording of the Hon. Trevor Griffin's amendment is that it is specific and a reader of my limited understanding would be able to see quite specifically the activities that would be excluded.

The Attorney may be able to assure me that within the wording of his amendment these matters are covered. Certainly, from a layman's interpretation, the Hon. Trevor Griffin's paragraph *(e)* would certainly appear to be a worthwhile inclusion, added to his original amendment which, I gather, he inserted after consultation with the Taxation Institute. As a first reaction I think it is reasonable to say that the wording of the Hon. Trevor Griffin's paragraphs *(d)* and *(e)* is more intelligible, therefore thus making them more preferable to me.

The Hon. C.J. SUMNER: I hope that the honourable member will change his mind because our basic argument is that what the Hon. Mr Griffin has picked up and seeks to exempt from this section are a number of transactions which, if committed to writing, would be the subject of duty—the creation of a mortgage, charge or lien over property, for instance, which the Hon. Mr Griffin specifically refers to. The argument from the Commissioner of Stamps is that when creating a security by way of mortgage, charge or lien over property then that, at the present time, is the subject of duty.

The Hon. K.T. Griffin interjecting:

The Hon. C.J. SUMNER: We are saying that that transaction is liable for duty if in writing and should remain so, even if structured as an oral contract. Part of the thrust of this legislation is to try to bring in those people who are attempting to avoid the legislation by the use of oral arrangements—those not committed to writing. That argumant applies also with respect to paragraph *(e)*.

The Hon. I. Gilfillan: Are both those transactions currently taxable *ad valorem* at the same rate as ordinary direct sales from one interested party to another?

The Hon. C.J. SUMNER: They are not taxable as sales but an *ad valorem* duty rate is applied to instruments; it is the creation of a mortgage.

The Hon. K.T. Griffin: It is not *ad valorem* in respect of conveyance—it's a lower rate of duty. It is a mortgage rate of duty.

The Hon. C.J. SUMNER: They are not sale rates; they are different rates. However, they are still *ad valorem* rates, based on the value.

The Hon. K.T. Griffin: This doesn't change that.

The Hon. C.J. SUMNER: It says that if you have an oral transaction creating a mortgage, charge or lien over property or an oral release or termination of an option for the purchase of property, it is excluded from the operation of the section. We say that they would be subject to stamp duty if in written documented form, and that they therefore should be if they were created by an oral arrangement between the parties.

The Hon. I. Gilfillan: Where do you find this oral interpretation in the Bill or the amendment?

The Hon. C.J. SUMNER: We are trying to deal with situations where stamp duty is being avoided either by oral agreements that are not subject to duty at present or by written offers in documented form which are then orally accepted and which are also, then, under the existing legislation, not subject to duty. The scheme of the legislation is to pick up those situations, and the clause is designed to do that in relation to the transactions that are mentioned. The second reading explanation refers to it as follows:

> Transfers of property have traditionally been effected by an instrument executed by all of the parties and which is required to be stamped. A practice has developed in recent years whereby oral acceptance or an acceptance by performance is given to a written offer and by this mechanism payment of stamp duty is avoided.
>
> This Bill introduces an amendment to require a dutiable statement to be lodged whenever there are changes in beneficial ownership of property not effected or evidenced by an otherwise dutiable instrument.

That is the section with which we are dealing. We are saying that there is no reason to exclude from that general provision which attempts to catch these transactions the things that the Hon. Mr Griffin is attempting to exclude, namely, the creation of a mortgage, charge or lien over property or the release of termination of an option for the purchase of property. If they are committed to writing the document, and properly executing it, at the present time they are subject to duty.

We are saying that they ought still be subject to duty even though they have effected the agreement by the method to which I have just referred, namely, the preparation of an instrument signed by one party but not the other but which is accepted by the other party, either orally or by performance of what is required by the agreement. It seems to me that this is really central to the intentions of the legislation and what my amendment does (and it is not precisely the same as the Hon. Mr Griffin's amendment but is similar) is to exclude certain transactions as not being appropriate, such as the appointment of a receiver or trustee in bankruptcy and so on, but not to exclude those transactions which at present, if prepared and executed in the normal way, would be subject to duty.

The Hon. I. GILFILLAN: There is confusion. I do not believe that the Hon. Mr Griffin would have moved an amendment to delete a category of activity which had previously been subject to tax. He can correct me if I am wrong, but that is not what I understand to be his intention. I would be surprised if it was. I imagine from what I have heard that there is a stamp duty leviable on mortgage, charge or lien over property, or the transfer of any interest in property by way of security, release or termination of an option for the purchase of property, and the rate is considerably less than would apply to a *bona fide* sale and a fullscale change of ownership from one person to another. The Attorney will find that the Democrats support every effort to cut out ways whereby legal dutiable tax is being

avoided. The confusion that still remains with me is what are the intentions of the Hon. Mr Griffin in including paragraphs *(d)* and *(e)* with 'this section does not apply', because that certainly reads as if there is to be a complete exemption. If that were the case, it would be a change from the current situation. Can the Hon. Mr Griffin explain that? I advise the Attorney that paragraph *(d)* is unintelligible to me. What does it mean?

The Hon. K.T. GRIFFIN: One of the matters that the Taxation Institute raised was the transfer of a legal interest. In New South Wales the duty is leviable on transactions that result in a change in the beneficial interest, rather than the legal or beneficial interest. There is a difference. I was seeking to ensure that, where there was a transfer of the legal interest in property, which was for the purpose of creating a mortgage, charge or lien over property (and that means that when the mortgage, the lien or the charge is satisfied, the property is transferred back to the true owner who has borrowed the money on the security of the mortgage, charge or lien) there was not thereby double duty.

Proposed section 71e relates to transactions not effected by an instrument on which *ad valorem* duty is chargeable. If the transaction had been effected or wholly effected by an intrument, the instrument would be chargeable with duty as a conveyance. My understanding is that, where property is conveyed by way of security, that is, it is a common law mortgage where the legal ownership changes, it is not stampable at conveyance rates of duty but at mortgage rates. When that mortgage is discharged, it is conveyed back. It seems to me that, as the Bill is presently drafted, if there is a conveyance of property for that purpose, it attracts duty at the conveyance rate of duty both ways. I may be wrong, but there is a problem with the proposed section if it does not contain the sort of provision to which I have referred.

One of the problems with the Attorney's paragraph *(d)* is that it exempts only a conveyance of property for nominal consideration for the purpose of securing the repayment of an advance or loan. I do not know what that means. If you talk about nominal consideration, there may be a conveyance for which the consideration is a loan of $100 000. That is not nominal consideration. Exactly what the Government has in mind must be clarified. With the release or termination of an option for the purchase of property, what the duty is must be clarified, anyway. My understanding is that if an option over property is granted it can be exercised. It is a long time since I looked at it; I recollect it was a 20c charge but it may be *ad valorem.*

It can then be exercised. If it is not exercised, it either expires or is released. If it expires, no duty is payable. If it is released for no consideration, what is the position? I would not have thought that any duty was payable on that release if it were in writing. If an option has been granted in writing, both parties would need to have it released in writing. There must be further clarification. I was looking to provide exemptions for areas which will not be the subject of duty, anyway. If I am wrong, I am happy to reconsider it.

The Hon. C.J. SUMNER: I am advised that all the matters that the honourable member seeks to exclude (namely, creation of a mortgage, charge of a lien over property, and release or termination of an option to purchase a property) are subject to duty at the present time.

The Hon. K.T. Griffin: At what rate?

The Hon. C.J. SUMNER: The first at mortgage rates and the second at conveyance rates, if they are in writing.

The Hon. C.M. Hill: Mortgage rates at the release of an option?

The Hon. C.J. SUMNER: No, at conveyance rates. It seems to be a factual dispute, but I am advised that those things that the honourable member seeks to exclude from the operation of the section are now dutiable.

The Hon. K.T. Griffin: But will this affect any instruments in writing?

The Hon. C.J. SUMNER: No, of course not, but the whole purpose of this clause is to pick up those instruments that are oral or in writing and not fully executed by all the parties; they are in writing by one party perhaps and accepted by another party orally, or accepted by the performance of the other parties. That is the rationale for the legislation. The argument that has been put to me by my advisers is that, by these means, you are seeking to exclude from that overall intention of the Bill those transactions which are dutiable if in writing and executed by both parties.

The Hon. I. Gilfillan: I don't believe that is the Hon. Mr Griffin's intention.

The Hon. C.J. SUMNER: The honourable member has said that he is prepared to reconsider the matter if that is what was happening. We say that is what was happening.

The Hon. I. GILFILLAN: For the sake of the progress of this matter, we are prepared to take on faith that the amendment on file for the Attorney-General achieves what has been spelt out as the aim—that really it is to catch what should in conscience be dutiable actions that are now being avoided by some devious means; and that the measures spelt out by the Hon. Mr Griffin are now dutiable and his amendment would remove from duty some transactions that are dutiable. I have made those assumptions as a result of what the Attorney-General has told me. We could spend a lot of time dealing with uncertainties and confusion about the wording. It is a recommendation and time could be spent far more profitably outside this Chamber verifying this matter rather than having an exhausting debate here tonight. I indicate to the Attorney-General that if what I have said is roughly what he understands to be the position then, with those qualifications, the Democrats would support his amendments.

The Hon. C.J. SUMNER: I appreciate the assistance of the Hon. Mr Gilfillan on this matter in order that it may progress. While it is being transmitted back to the House of Assembly, we are prepared to examine it to see whether there is a problem. Further, if it is not resolved then, the Commissioner of Stamps has advised me that it is possible to remove a class of transaction by regulation.

The Hon. I. Gilfillan: I am not very happy with that explanation.

The Hon. C.J. SUMNER: I knew that you would not be happy with it.

The Hon. I. Gilfillan interjecting:

The Hon. C.J. SUMNER: That is right, and that is the point I tried to make before.

The Hon. K.T. GRIFFIN: I am not trying to remove those transactions that are now dutiable when evidenced in writing. That is a misunderstanding.

The Hon. C.J. SUMNER: I think that the policy seems to be clear, but what is not so clear is whether we achieve the objectives of the policy in the wording. So the Hon. Mr Gilfillan supports our amendment. We undertake to re-examine it before it is dealt with in another place, and presumably that will not be until next week.

The Hon. G.L. Bruce: We will not be here next week.

The Hon. C.J. SUMNER: Well, we will get on with it as soon as we can to determine whether there is a problem, and we will have discussions with the Hon. Mr Griffin.

The Hon. K.T. GRIFFIN: There is one other area which needs to be looked at, that is, the question of liens. I would

like to know the extent to which liens will be caught because there are warehousemen's liens and workmen's liens, and a charge under the Workmen's Liens Act, charges for council rates under the Local Government Act and unpaid rates or a charge upon land. We need to look at all those areas to determine whether in fact because the charge is created—for example, by doing work for, say, a partnership—in some respects the interest in the partnership might be subject to charge. It is difficult to explore all the possibilities on the run. In the light of the indication by the Australian Democrats I will not call for a division on my proposition if I lose on the voices (if it gets that far). I certainly would be pleased to have further discussions on the issue.

The Hon. C.J. SUMNER: We undertake to do that.

Suggested amendment carried.

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

Page 4, lines 22 to 28—Leave out subclause (5) and insert new subclause as follows:

(5) Where a statement is lodged with the Commissioner under this section—

(a) any instrument that relates to the same transaction is not chargeable with duty to the extent to which duty has been paid on the statement; and

(b) the statement will not be charged with duty to the extent that duty has been paid on any instrument that relates to the same transaction.

The amendment inserts a new subclause (5). Subsection (5) presently provides that, if a statement is lodged and duty is paid, any associated instrument is exempt from duty to the extent that it is paid duty. This new subclause will also state the converse: the statement will not be their duty to the extent that any duty has been paid on an instrument that relates to the same transaction.

The Hon. K.T. GRIFFIN: I support the amendment. It is a useful clarification of the extent to which duty is payable.

Suggested amendment carried.

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

Page 4, after line 40—Insert new subsection as follows:

(6a) It is a defence to a charge against subsection (6) to prove that the defendant entered into the transaction in the reasonable expectation that stamp duty payable under this Act in respect of the transaction would be paid by some other party to the transaction.

The amendment will provide a defence against a charge for an offence under subsection (6). The defence for failing to lodge a statement within two months after a change in legal or equitable ownership of property is that the defendant entered into the transaction in the reasonable expectation that stamp duty payable under the Act in respect of the transaction would be paid by some other party to the transaction.

It is reasonable that, if there is the sort of expectation that someone else would pay the duty in respect of that transaction, that would be a defence to a charge. It does not provide an indemnity from the payment of the duty; it merely provides a defence against a criminal charge. The onus of proof is on the defendant to show that he or she or it had a reasonable expectation that some other party to the transaction would pay the stamp duty.

The Hon. C.J. SUMNER: The Government opposes the defence provision. While it has been agreed that a defence provision is applicable in the case of non-lodgment of an instrument, it does not seem to be appropriate in a situation where both parties have a liability to lodge a statement recording an oral transaction. It seems that, because of the nature of this legislation which is designed to bring in oral transactions, to have a defence provision would provide the means for persons to avoid the effect of the legislation.

The Hon. I. GILFILLAN: The Democrats oppose the amendment.

The Hon. K.T. GRIFFIN: I will not divide if I lose the amendment on the voices, but I think there are enough uncertainties about the provision to provide a defence. For example, in his response to my second reading speech the Attorney-General said something along the lines that only one party to a transaction is required to lodge a statement. Obviously that is not correct because the obligation to lodge a statement, even under this penal provision, is placed upon both parties. If the parties want to protect themselves from prosecution they both have to lodge statements, otherwise, even though it has been agreed between the parties and there is a contractual obligation for one party to lodge the statement, the other party cannot be 100 per cent certain that the statement will be lodged. If the defence clause had been included I do not think there would have been any defeat of the intention of the legislation; it would have been in accordance with reasonable commercial practice. At present every party to a transaction covered by the new section 71e will have to file a statement to ensure that the party is not liable to prosecution.

The Hon. I. Gilfillan: Surely they can inquire.

The Hon. K.T. GRIFFIN: When you are talking about an offence I do not think you can afford to rely on other people to do something, even though they have a contractual obligation to do so.

The Hon. I. Gilfillan: Why can't you inquire of the Commissioner?

The Hon. K.T. GRIFFIN: You can inquire of the Commissioner every day, but what do you do? One day before the end of the two months you find that the statement has not been lodged and rush in and lodge it. The amount of cost and time involved in checking every day—or even towards the end of the period—to see whether it has been lodged would be extensive in some instances and even if somebody had a contractual obligation to lodge the statement there would be no contributory statutory obligation.

The Hon. I. Gilfillan: You are just putting up a shelter for tax evaders. You could have two of them both arguing that they thought the other one was going to do it.

The Hon. K.T. GRIFFIN: With respect that is not so.

The Hon. I. Gilfillan: It appears that way on the surface.

The Hon. K.T. GRIFFIN: It might appear that way, but I do not believe that any reasonable person can perceive that. It really takes no cognisance of commercial reality, and I find that disappointing.

The Hon. C.J. SUMNER: That will all get back to documentation.

Suggested amendment negatived.

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

Page 4, line 43—Leave out 'the other person does not intend' and insert 'none of the parties to the transaction intends'.

This amendment clarifies the operation of new subsection (7). It is a drafting matter and does not involve any change in policy or approach.

The Hon. K.T. GRIFFIN: I support the amendment, which is the same as mine.

Suggested amendment carried.

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

Page 4, after line 46—Insert new subsection as follows:

(8a) If a statement relating to a transaction to which this section applies is lodged with the Commissioner but it is subsequently established to the satisfaction of the Commissioner that the transaction is not to be completed, the Commissioner may refund any duty paid on the statement.

The Taxation Institute was concerned that a party might lodge a statement under the new section and never complete the transaction. This amendment will allow the Commissioner to give a refund if he or she is satisfied that in fact the transaction will not be completed.

The Hon. K.T. GRIFFIN: I applaud the generosity of the Attorney-General in conceding that in some instances there may be a requirement to refund duty. I certainly support the amendment.

Suggested amendment carried; clause as amended passed.

Clause 8—'Unregistered mortgages protected by caveats.'

The Hon. K.T. GRIFFIN: I would like to get from the Attorney-General some further clarification on the way in which this will operate, particularly in relation to some of the matters that he raised in his reply to my contribution. Will the Attorney-General indicate what procedures will apply with caveats which have to be the subject of stamp duty, where the caveat protects a mortgage? Is the $4 duty stamp in respect of paragraph *(a)* of the new subsection (2) to be affixed by adhesive stamp, or will it have to be lodged with the Commissioner in respect of paragraph *(b)*? What procedures are to apply? What sort of time frame is involved in going through the procedure of paying the duties on the caveats?

The Hon. C.J. SUMNER: Discussions have been held between senior managers of the Lands Titles Office and the Stamp Duty Office concerning the matter to which the honourable member refers, namely the manner in which stamping and lodgment of caveats is to be dealt with. A priority bay will be established at the stamps office counter specifically to process caveats. Persons seeking to stamp caveats as a matter of urgency will be able to use this facility in lieu of the normal ticket system.

Clause passed.

New clause 9—'Transitional provision.'

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

Page 5, after line 22—Insert new clause as follows:

9. Section 71e of the principal Act applies in relation to transactions entered into on or after 7 December 1987, but no offence arises under subsection (6) *(a)* of that section in relation to a transaction entered into before the date of assent to this Act if the required statement is lodged with the Commissioner within two months after assent.

This is a transitional provision. Section 71e is to come into operation on 7 December 1987 and applies to transactions entered into on or after that date. It requires parties to lodge a statement within two months of the transaction. The first two month period has now passed. This amendment will allow parties that have entered into transactions between 7 December 1987 and the date of assent a further two months from the date of assent to lodge a statement without committing an offence.

The Hon. K.T. GRIFFIN: I accept that. It is consistent with the amendments that have already been accepted by a majority of the Committee, although, as I have indicated, I do not support the concept of retrospectivity to 7 December.

Suggested new clause inserted.

Title passed.

Bill read a third time and passed.

LANDLORD AND TENANT ACT AMENDMENT BILL

Adjourned debate on second reading.

(Continued from 18 February. Page 2851.)

The Hon. K.T. GRIFFIN: The matter of commercial tenancies and the relative rights of landlords and tenants is a vexed question to which there is no easy solution. On the one hand, landlords provide the facilities within which various business enterprises may be carried on, and such facilities may involve strip shopping or the more complex and extensive regional shopping centre type development. Landlords obviously believe that, having expended the capital, taken the risks, provided the environment for commercial activity, they are entitled to have some say in the way in which the facility is carried on, the tenants to whom they may let parts of those premises, the hours during which they are open for business, and the sorts of promotions which may be presented on behalf of the whole of the shopping area.

On the other hand, tenants believe that they ought to be in a position to make the commercial decision about the times within which they carry on business, the extent of their own promotion, the range of their own goods and services which they will offer to the public, and of course the rate at which they will be offered to the public. They believe that they are the persons who provide the manpower to supply the service to shoppers within a shopping area, and that they too ought to have some rights in relation to the conduct of their own business. There is, of course, merit in both sides of those arguments, but there are also tensions between the two, particularly where the landlord is looking to maximise the return and believes that, to provide a viable shopping area, all of the facilities ought to be available for as long as reasonably possible.

That, of course, does not take cognisance of the difficulties that some tenants will experience at certain times of the day or week. Some, for example, may not be viable early in the week if they are selling products which that are generally more likely to be sought towards the end of the week. Similarly, some will not be viable on a Saturday afternoon because their sort of business is not being sought by a reasonable number of people at that time of that day, while others will find that on Sundays, for example, there is a great demand for the goods and services that they provide on that day at various times. So the issue is complex and the task of a Government is to try to find its way through that complex position and to achieve equity.

Of course, the Government has, to a large extent, brought this problem on its own shoulders with its attitude towards shop trading hours. I do not intend to amplify the debate on that issue in relation to this Bill. Suffice to say that this Bill arises from the concerns that I expressed last year during the debate on the defeated Bill to extend shopping hours to Saturday afternoon. I drew attention then to the problem that there were many leases which required the tenants to open for such hours as the landlord may require, or based upon some other formula, which had reference to the shop trading hours legislation. In those circumstances, the Government now belatedly brings this Bill before us with the prospect that shop trading hours into Saturday afternoon will, after the Festival of Arts, become non-existent for some facilities.

I have been in contact with a variety of people who have an interest in this area. The Building Owners and Managers Association has a point of view. It is not an unreasonable point of view, and its policy is as follows:

Having evolved and encouraged that method—

that is, that hours outside a core set of hours for shopping centres ought to be determined by a majority of the owners and tenants—

throughout Australia, the association has been encouraged by the progressive use of those practices in the shopping centre industry. The Government has been reminded of that and the sensibility of allowing that democratic process to seek its own level, which the association believes will become universally adopted. However, owners and tenants must have the continued right to confirm their agreement in legally enforceable contracts or leases for the benefit of their trading communities and the public. Trading hours should not be subject to legislation either positively or prohibitively as now proposed by the Government in an amend-

ment to the Landlord and Tenant Act which will interfere with those agreements between trading partners.

On the other hand, the Retail Traders Association, the South Australian Small Business Association and the Chamber of Commerce and Industry support the general thrust of the Bill. The South Australian Small Business Association wants to go further and to involve the Commercial Tribunal in rent dispute resolutions, while the Chamber of Commerce and Industry recognises the problem that the legislation will create for owners and operators of shopping centres.

The Law Society Property Committee has made some observations on the Bill. Among other things, it says that there are already a large number of leases in existence which give the landlords and tenants the opportunity to agree on matters themselves, and it believes that, basically, there ought to be that freedom for landlords and tenants to negotiate their own terms. It states:

> The committee considered that landlords and tenants of shopping centres should be free to agree on the hours the centre would be open when negotiating tenancy agreements, but that landlords should not be able to increase the hours. A business must be open during the term of the lease. The committee queries whether the amendment would have a retrospective effect so as to apply to existing commercial tenancy agreements or would only apply to agreements entered into after the Bill is passed. The committee also noted that the Bill only applies to Saturdays and would not prevent a landlord from requiring tenants to open on Sundays, public holidays or at night, except Saturday night.

It also refers to the fact that already many shops open seven days a week, for instance, the super delicatessen type of shop or other shops or supermarkets which meet the requirements of the Shop Trading Hours Act, and that it would be a pity to intrude on the arrangements between landlords and tenants in those sorts of circumstances.

Notwithstanding this Bill, there will be pressure on tenants to open at times other than those referred to in the particular lease, and in some areas where they are unlikely to gain a renewal of a lease if they do not yield to that informal pressure. The difficulty is to find some balance between those differing viewpoints. The Bill also applies to shopping centres of six or more shops and, to that extent, there is also some concern.

I draw attention to the fact that in Victoria a provision exists in the Retail Tenancies Act and the associated Shop Trading Act which provides specifically that any condition in a lease requiring a tenant to open between 12.30 p.m. and 5 p.m. on Saturdays is void. That makes it specific, and I suggest that that course of action would be more appropriate in our case. No clause exists in the Bill before us and there is no section in the principal Act to provide for those opening during that period of Saturday afternoon to share the costs of opening. However, there ought to be provision for any dispute as to the cost of services such as airconditioning, electricity and security to be shared between those trading on Saturday afternoons and, if there is a dispute, for that to be resolved by the Commercial Tribunal.

The Bill is very much open ended. It seeks to make void a condition requiring shops to open after 12.30 p.m. on Saturday, and I am not sure whether that means only for the rest of Saturday or for Sunday as well. It does not take into account that some shops such as certain delicatessens, pharmacies, and so on, are already required to open during that period. While the Bill is supported in principle by the Opposition, it raises a number of issues that have not been addressed. I would like the Attorney-General to give some attention to those matters, particularly to the possibility of making the Bill more precise than it is presently when he comes to consider the matters to which I have referred. For the purpose of enabling the matter to go into Committee, at which time I will raise further questions, I support the second reading.

The Hon. C.J. SUMNER (Attorney-General): I thank the honourable member for his support of the second reading of the Bill and seek leave to conclude my remarks later.

Leave granted; debate adjourned.

STRATA TITLES BILL

Adjourned debate on second reading.

(Continued from 25 February. Page 3083.)

The Hon. C.J. SUMNER (Attorney-General): I thank the Hon. Mr Griffin for his support. The Hon. Mr Gilfillan will be gratified to know that there is a degree of bipartisanship exhibited in relation to this matter that is not always exhibited in relation to some other matters that the Hon. Mr Gilfillan is called to adjudicate upon. I thank the Hon. Mr Griffin for his support of the Bill and for the support of the Opposition. Really, this is a law reform measure about which there is no great political conflict.

The Hon. Mr Griffin made some general statements about the need for a Strata Titles Commissioner which is not included in the Bill but which was raised by me in my second reading speech as an issue that needed to be examined and about which the Government was seeking comment. The Hon. Mr Griffin said that he did not believe a Strata Titles Commissioner was necessary. He does believe that, where there are disputes about matters that do come within the purview of the strata corporations articles of association or rules, a mechanism ought to be available for resolving the dispute. I have already indicated that this is the subject of further examination, and it is hoped that a satisfactory solution can be found.

There are a number of other options that could be examined, including having these disputes resolved by the Residential Tenancies Tribunal, which seems to me to be reasonably appropriate. The key question is how one funds such a dispute resolution procedure. The Government is of the view that it ought not to be an imposition on the general taxpayer but that it is something that ought to be paid for by strata title owners. How that can be done precisely is still a matter that requires examination, but the Government appreciates that the Hon. Mr Griffin is opposed to a Strata Titles Commissioner but apparently supports some other means of solving disputes.

The Hon. Mr Griffin also made some general statements about staged development which he recognised is the subject on which opinions differ. This Bill does not provide for staged developments as such, because of the possible difficulties that could arise if all stages were not completed. The purchaser of a unit in the original development could be left with but a shadow of the grandiose scheme he thought he was buying into. By allowing the amalgamation of adjoining strata plans, the Bill is a vast improvement on the existing requirements which involve the cancellation of existing plans and the deposit of a new plan with all the attendant costs. This is another area which will be kept under review by the Government to see whether a more satisfactory solution can be reached. I take it that the honourable member was not necessarily supporting staged developments either, for the reasons that I have outlined.

I note that the honourable member does not advocate the licensing of strata title managers, and that is something about which we have no disagreement. I will deal with the honourable member's queries as succinctly as I can by reference simply to the clauses. As to clause 3, in the defi-

nition of 'strata corporation' the word constituted is used. the suggestion that 'incorporated' should be substituted to provide consistency with the terminology in clause 8 (2) *(c)* and in clause 40 (2) is made by the Hon. Mr Griffin. I would not object to that, if the Hon. Mr Griffin wants to move an amendment, although we do not concede that it is necessary.

Clause 4 provides that the Bill and the Real Property Act are to be read together and construed as if they constitute a single document. As the honourable member points out, the Law Society says this may create problems but it has been unable to identify them. A careful consideration of this has been unable to identify any problems.

Clause 5 (1) provides that a strata plan is a plan dividing land into units and common property. The honourable member queries what is the situation where there is no common property. The answer is that there always is common property if only the inside of party walls of attached units or the exterior surface of roofs. Clause 5 (3) *(b)* requires units to be numbered consecutively from 1. When an amalgamation of two developments happen there will be a renumbering. The Hon. Mr Griffin suggests that, where it is proposed to amalgamate developments, the second and subsequent developments should be able to commence on the number after the last number of the first or earlier development. The Government agrees, and I will move an amendment. The numbering will then have to comply with requirements stipulated by the Registrar-General under clause 5 (3) *(f)* who will take cognisance that the plan is to be amalgamated with another plan.

The Hon. Mr Griffin points out that no provision is made in clause 6 (1) for a minimum aggregate of unit entitlements. There is, however, provision for this to be prescribed by regulations. He also criticises clause 6 for providing that unit entitlement of a unit is a number assigned to a unit representing the relative capital value of the unit to the aggregate capital value of all units. The Law Society submitted that a number cannot represent the relative capital value of the unit to the aggregate value of all units. This can be done by only a percentage, fraction or other ratio. I do not follow the reasoning of the Law Society. I am satisfied that the provision is clear and workable. However, I will be happy to look at anything the Hon. Mr Griffin suggests.

Clause 7 (1) provides that an application for deposit of a strata plan may only be made by the owner of the land to which the plan relates. The honourable member considers that a mortgagee in possession should be able to apply for the deposit of a strata plan as a strategy for maximising the return on the sale of the security. The Government agrees and has an amendment to this effect on file.

The honourable member says that clause 8 (6) *(a)* should provide for the registered encumbrance on land to which a title plan relates should be registered on the certificates for each unit. This is what the section provides.

The honourable member makes the point that the provision in clause 10 (2) would not prevent a unit holder from disposing of the unit but retaining his interest in the common property. The provision in providing that the common property cannot be alienated separately from the unit prevents the retention of an interest in the common property where the unit is disposed of. I also draw the honourable member's attention to clause 26 (5), which enables the corporation to dispose of common property.

The honourable member considers that the provision in clause 12 (6) cannot be effective unless all the registered encumbrances are to the same person. If the encumbrances are to different people, in what order do they rank? He suggests that the consolidation should be conditional upon all encumbrances being discharged, which would enable the consolidation to occur and the parties then to agree as to the order of priority which should apply in respect of the new encumbrances on the unit which result from the consolidation. Where encumbrances are to different people all the encumbrances will have to be discharged and priorities worked out. There is no need for provision for this to be made in this Bill. Clause 12 (6) is facilitative—for simple cases.

With clause 13 (2) *(d)* the honourable member suggests that an insurer is not defined. An amendment was passed in the other place to provide that an insurer is an insurer of a unit or any of the common property. This should satisfy those concerns.

Clause 13 (3) provides that an application can be made to the Supreme Court to order amendment of a strata plan for three purposes—correcting an error in the plan, varying the unit entitlements, or achieving amendments that are desirable in view of damage to the buildings. The honourable member sympathises with the view of the Standing Committee of Conveyancers that there should be a catch-all provision which allows an application to a court for other purposes involving rectification of the plan. I cannot think what these situations would be, but I am happy to look at anything that the honourable member may suggest.

Clause 14 requires the consent of both the Planning Commission and council to a strata plan. The honourable member queries why the consent of the Planning Commission is required. It is required for many reasons—there could be a change in land use involved; and the commission must ensure that the development is in conformity with the Planning Act and development plan. Questions of, *inter alia*, zoning, traffic flow, contribution to the fund and common property must be considered by the commission.

Clauses 14 (4) *(a)* and 14 (7) *(b)* (i) provide that the Planning Commission and council can approve applications only if they are satisfied that they comply with the Planning Act 1982 and the development plan under that Act. The honourable member suggests that if units complied with the relevant laws at the time of their construction, that should be enough to enable those units to be strata titled now. In most cases the Planning Commission will give approval. However, a residential discretion needs to be given to the commission.

Clause 15 relates to the time for appeal. The time can be extended under clause 15 (2). Clause 16 deals with amalgamation of adjacent sites, and clause 16 (4) provides that a provision, in an agreement to purchase a unit providing that a person will consent to an amalgamation with another strata plan, is void. This is a difficult area, as the honourable member points out. It may be possible to protect a purchaser by providing adequate knowledge of what is proposed and being bound to suggest the amalgamation on the basis of that knowledge.

I should point out that a provision in a contract obliging a party to consent to an amalgamation is of dubious value to a developer in any event. The original purchasers of the units may have re-sold their units before the proposed amalgamation takes place. On further consideration, I propose that it should be possible to apply to the court for an order to amalgamate where there are a few recalcitrant unit holders, and I will move appropriate amendments.

In relation to clause 17 (2), the honourable member considers that this subclause requires the seal of the corporation on an instrument of cancellation when there is a court order for cancellation. Court ordered cancellations are dealt with

under clause 17 (5) where there is no requirement for the common seal.

Clause 17 (7) *(a)* provides that on cancellation all land comprised in the plan vests in the former unit holders. The honourable member considers that remainder and reversionary interests are thereby excluded. The same point is made in relation to clause 17 (7) *(c)* and *(d)*. Amendments are on file to rectify the situation.

Clause 17 (7) *(b)* provides that on cancellation of a strata plan the corporation is dissolved. The honourable member suggests that a person who owned a unit free of mortgage would find his interest subject to the mortgages over every other unit. An amendment to clause 17 (7) *(a)* made in the other place provides that this is not so.

Clause 18 (3) provides that the corporation shall have a common seal. The honourable member suggests that some provision should be made in either clause 18 or 24 as to how the common seal of the strata corporation should be authorised and affixed to documents. This is a matter of internal organisation of the corporation and should not be dictated by the legislation. What is appropriate for one body may not be for another.

Clause 19 (4) *(c)* refers to a guide dog for the blind or deaf. The honourable member suggests that the terminology is wrong—deaf people do not have guide dogs; they have hearing dogs. The term 'guide dog' is used in section 88 of the Equal Opportunity Act 1984 to refer to dogs that assist both blind and deaf people. It is grammatically correct to speak of a guide dog for the deaf. Chambers Twentieth Century Dictionary, for example, defines guide as to lead, conduct or direct, to regulate: to influence. Thus, the word 'guide' is equally appropriate for dogs that assist the blind as for dogs that assist the deaf.

Clause 22 provides that a strata corporation must not make any payment to any of its members. The honourable member suggests that strata corporations should have power to pay members reasonable amounts for services rendered to them. The Government agrees and has an amendment on file. The honourable member also suggests that, in making it an offence for the strata corporation to make a payment to any of its members, innocent unit holders could be penalised and only the persons who authorise the payment should be guilty. The honourable member appears to be overlooking the fact that the unit holders are the corporation. Payments not authorised by the corporation do not attract a criminal sanction.

Clause 23 provides for the corporation to have officers. The honourable member considers that provision should be made for the officers to delegate, to a professional administrator, administrative matters. Nothing in this Bill prevents the corporation from employing agents in connection with the control, management, administration, etc., of the corporation. I also draw the honourable member's attention to clause 23 (6).

Clause 28 relates to the power of the corporation to enforce duties of maintenance or repair and provides that, where the corporation has had work carried out and has recovered the cost from the unit holder but the defect was due to the actions of another unit holder, the first unit holder can recover the money from the second. The honourable member suggests this right of recovery should also apply to work carried out under clause 28 (1). Such a provision is not necessary. Where a unit holder has carried out work under subclause (1) necessarily incurred as a result of another unit holder he has, under general principles of law, a right of recovery against the offending unit holder.

In relation to clause 29, the honourable member suggests that it might be appropriate to put in a power that the corporation can require the person in default to restore the premises to their original condition. Clause 29 (2) *(b)* so provides.

Clause 34 makes reference to commercial or business premises. The honourable member believes that these should be defined. Anything that is not residential is commercial or business premises. Clause 34 also refers to a 'poll' which is not defined. I do not find this a problem but would be happy to look at any amendment that the honourable member may wish to move.

The honourable member believes that Clause 35 places further limitations on any power to delegate. I am unable to see how this is so. It merely provides that the corporation can, if it wants to do so, appoint a management committee and, if it does, how the committee is to operate. It says nothing about not having other approaches to management. Clause 43 deals with insurance. An amendment passed in another place should satisfy the honourable member's concerns.

In relation to schedule 2, transitional provisions, clause 5 (4) *(c)* refers to certificate of title. The honourable member suggests it should just refer to certificate. I am happy to agree to that if the honourable member wants to amend the section.

The honourable member raises two concerns with schedule 3 and the articles. It must be remembered that these articles are merely the first articles of the corporation and provide a basic set of rules. The corporation is free to amend them or to adopt a whole new set if it wishes. As a starting point I believe that the articles as drafted are satisfactory, but will move an amendment to make it clear that article 10 applies only to residential premises. As the honourable member notes, nothing in the Bill relates to planning contributions. This will be dealt with in the regulations. It is not intended to alter the existing exemption of pre 1968 schemes from making contributions. Also, there is nothing in the Bill about requiring any percentage of the plan to be common property. The point is taken about a pair of maisonettes. This will be addressed if any regulations are made in this regard.

Bill read a second time.

In Committee.

Clauses 1 and 2 passed.

Clause 3—'Interpretation.'

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

Page 2, line 32—Leave out 'constituted' and insert 'created'.

This is a drafting amendment. It makes the provision consistent with clause 8 (2) *(c)* and clause 40 (2), both of which refer to the strata corporation being created.

Amendment carried; clause as amended passed.

Clause 4 passed.

Clause 5—'Nature of strata plan and requirements with which it must conform.'

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

Page 3, lines 27 and 28—Leave out '(the numbers of the units being in series starting with the number one)'.

This amendment removes the requirement that the numbers of units must be in series starting with one. I refer to my second reading reply.

The Hon. K.T. GRIFFIN: I support the amendment.

Amendment carried; clause as amended passed.

Clause 6—'Unit entitlement.'

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

Page 4, lines 26 to 28—Leave out subclause (1) and insert new subclause as follows:

(1) The unit entitlement of a unit is a number assigned to the unit that bears in relation to the aggregate unit entitlements of all of the units defined on the relevant strata plan (within a tolerance of ± 10 per cent) the same proportion that the capital value of the unit bears to the aggregate capital value of all of the units.

In my view this amendment clarifies the problems raised by the Law Society and others with me about the way in which the proportions are to be described and established.

The Hon. C.J. SUMNER: The amendment is acceptable.

Amendment carried; clause as amended passed.

Clause 7—'Application for deposit of strata plan.'

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

Page 4—

Line 34—Leave out 'An' and insert 'Subject to subsection (1a), an'.

After line 35—Insert new subclause as follows:

(1a) Where a person makes an application under subsection (1) and before the plan is deposited—

(a) title to the land to which the plan relates is transferred; or

(b) a mortgagee becomes entitled to exercise a power of sale in relation to the land,

the successor in title to the land, or the mortgagee, is entitled to proceed with the application and must, within one month of becoming so entitled, inform the Registrar-General of that fact and whether he or she proposes to proceed with the application.

This amendment allows a successor in title to land or a mortgagee in possession to continue with a strata application where the owner of the land had applied for the deposit of a strata plan before title passed to the successor or mortgagee, as earlier elaborated in the second reading reply.

The Hon. K.T. GRIFFIN: I support the amendment. As indicated, it is the same as the amendment which I have on file and does accommodate the position where a mortgagee is entitled to exercise a power of sale in relation to land, and that person may apply for the deposit of a strata plan. I think that this is a distinct improvement on the provision as it came to us from the House of Assembly.

Amendment carried; clause as amended passed.

Clause 8—'Deposit of strata plan.'

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

Page 6, line 15—Leave out 'each certificate for a' and insert 'the certificate for each'.

This is a drafting amendment.

The Hon. C.J. SUMNER: The amendment is acceptable.

Amendment carried; clause as amended passed.

Clauses 9 to 11 passed.

Clause 12—'Application for amendment.'

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

Page 7, after line 28—Insert new paragraph as follows:

(da) an instrument providing for the discharge of any registered encumbrance shown on the original certificate or certificates of the units that should, in the opinion of the Registrar-General, be discharged;

My difficulty with subclause (6) was that, where there was to be a consolidation of two or more units into one unit, the Bill provides:

. . . any unit created by the amendment will be held subject to any registered encumbrance shown on the original certificate or certificates (unless an instrument providing for the discharge of the encumbrance is lodged with the Registrar-General).

The difficulty is that where two or more units are consolidated there may be different registered encumbrances on those units. It seemed to me that the logical thing to do was to provide for the Registrar-General to require a discharge of any registered encumbrance in those circumstances where the encumbrancees were different so that the priority could be resolved. In his response the Attorney said that he did not think that it was necessary to make any special provision. I just think that this helps to clarify the position and puts beyond doubt something that was certainly raised with me by two different groups of people.

The Hon. C.J. SUMNER: The amendment is acceptable.

Amendment carried; clause as amended passed.

Clause 13—'Amendment by order of the court.'

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

Page 8, after line 25—Insert new paragraph as follows:

(d) for the purpose of achieving any other amendments that are desirable in the circumstances of the particular case.

I feel that the court ought to have a wider power than is presently given in subclause (4) in case there are other circumstances where it might be appropriate for a court to become involved in the amendment of a strata plan

The Hon. C.J. SUMNER: The amendment is acceptable.

Amendment carried; clause as amended passed.

Clause 14 passed.

Clause 15—'Appeal to Planning Appeal Tribunal.'

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

Page 10—

Line 24—Leave out 'any contrary order of the Planning Appeal Tribunal' and insert 'subsection (2)'.

After line 32—Insert new subclause as follows:

(2a) The Planning Appeal Tribunal may allow an extension of time for commencing an appeal under this section.

Strictly, the amendments are probably not necessary, but I think they are desirable to ensure that people who are reading this legislation and people who are likely to be unit holders will appreciate that in all instances the Planning Appeal Tribunal can allow an extension of time. During my consideration of the Bill, it was put to me—and I raised this during the second reading debate—that the commission may fail to make a decision within the prescribed time. So, rather than immediately rushing off to issue proceedings an applicant may endeavour to cajole, persuade or whatever to get it without running up additional costs. In those circumstances the two month time period or whatever other period might be prescribed may have expired. I think that my amendment goes some way towards putting on the record that these periods of time may be extended.

Amendments carried; clause as amended passed.

Clause 16—'Amalgamation of adjacent sites.'

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

Page 11, lines 4 and 5—Leave out paragraph *(b)* and insert new paragraphs as follows:

(ab) must be endorsed with a statement to the effect that the application is made in pursuance of unanimous resolutions duly passed at properly convened meetings of the strata corporations;

(b) must be endorsed with the consent of all persons (other than unit holders) with registered interests in the units;.

This amendment will facilitate amalgamation of strata plans. Subclause (2) *(b)* presently requires all unit holders to consent to an amalgamation. The amendment requires the application to be made pursuant to the unanimous resolution of the strata corporation. A later amendment, new clause 45a, deals further with the unanimous resolutions and enables application to a court to dispense with the requirement of an absolute resolution.

The Hon. K.T. GRIFFIN: I support the amendment.

Amendment carried.

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

Page 11—lines 28 to 30—Leave out subclause (4).

This is a difficult area. I have some difficulty with subclause (4) as it appears in the Bill. It seems to me that if parties want to enter into an agreement to purchase a unit, and it is intended that ultimately the corporation of which that unit is a part will be amalgamated with some other corporation, the parties ought to be able to agree. I do not know what perceived evil is intended to be covered by the present

subclause (4), but in the absence of any persuasive argument to the contrary, I think we would be better off without it.

The Hon. C.J. SUMNER: I accept the amendment.

Amendment carried; clause as amended passed.

Clause 17—'Cancellation.'

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

Page 12, line 24—Leave out 'unit holders' and insert 'registered proprietors of the units'.

This amendment, by substituting 'registered proprietors of the units' for 'unit holders' ensures that the interests of remainder-men and reversioners are recognised on the cancellation of a strata plan.

The Hon. K.T. GRIFFIN: I support the amendment. It is identical with the amendments that I have on file. It is designed to ensure that all those who have an interest in a unit in a strata plan which is cancelled have that interest recognised on the cancellation of the strata plan. For those reasons, I support the amendment.

Amendment carried.

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

Page 12, line 26—
Leave out 'unit holder' and insert 'registered proprietor'.

This amendment is consequential.

Amendment carried.

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

Page 12, lines 27 and 28—Leave out 'the unit of which he or she was the registered proprietor)' and insert 'his or her unit)'.

This amendment is consequential.

Amendment carried.

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

Page 12, lines 30 and 31—Leave out 'unit holders' and insert 'registered proprietors'.

This amendment provides that liabilities also attach to remaindermen and reversioners.

Amendment carried.

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

Page 12, line 35—Leave out 'unit holders' and insert 'registered proprietors'.

This amendment provides that remaindermen and reversioners receive their share of any assets of the former strata corporation.

Amendment carried.

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

Page 12, lines 37 and 38—Leave out subclause (8) and insert new subclause as follows:

(8) For the purposes of subsection (7), the former registered proprietor of a unit is the person who was the registered proprietor of the unit immediately before the cancellation of the plan.

This amendment, by providing that the former registered proprietor of a unit is the person who is the registered proprietor of the unit immediately before the cancellation of the plan, clarifies who is entitled to receive the assets of the former strata corporation on cancellation of a strata plan.

The Hon. K.T. GRIFFIN: I support the amendment.

Amendment carried; clause as amended passed.

Clause 18—'Name of strata corporation.'

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

Page 12, after line 46—Insert new subclause as follows:

(3a) The common seal of a strata corporation must not be affixed to a document except to give effect to a resolution of the corporation.

(3b) The affixing of the common seal must be attested by at least one unit holder.

This amendment relates to the question of the affixing of the common seal. It is probably appropriate to have something in the statute as to the use of the common seal, and this amendment will have that effect.

The Hon. C.J. SUMNER: I hate to shatter the tranquility and general comity of the evening, but the Hon. Mr Gilfillan will be required to cease his discourse with his colleague and listen to this matter as we have arrived at a point where there is—

The Hon. I. Gilfillan: A dispute?

The Hon. C.J. SUMNER:—a dispute. The Government opposes this amendment, which provides that you cannot affix the common seal to a document except to give effect to a resolution of the corporation. Our point is that, if the corporation wants to authorise some of its members to affix the seal in given circumstances, it should be able to do so without calling a meeting to obtain the resolution of the corporation in every case.

The Hon. K.T. GRIFFIN: I felt that it was important to have some measure of control over the common seal.

The Hon. C.J. Sumner: They can't affix it willy-nilly.

The Hon. K.T. GRIFFIN: Not legally. However, I have known of situations with companies, for example, where the common seal is affixed and the affixing of the seal is ratified after the event. I would not have thought that that was appropriate in this instance because one is dealing with a totally different entity. I would have thought that if we were trying to minimise the potential for disputes it was important to have some provision relating to the use of the common seal. It is not a matter on which I will go to the barricades. Of course, the common seal is the official insignia of the corporation. I guess that if it is affixed fraudulently, third parties, unless they have notice of that fraud, can act on the document that appears to have the seal properly affixed to it. I am fairly relaxed about it.

The Hon. I. GILFILLAN: The one real authority in this matter is just about to leave the Chamber. I know that the Hon. Diana Laidlaw is a user of strata titles, and her opinion would have been valuable to me in making a decision about this. The Democrats will vote in the direction that the Government eventually takes after whatever discussions are held.

The Hon. C.J. Sumner: We said that we were opposed to the amendment; that is why I indicated that.

The Hon. I. GILFILLAN: The Attorney's interjection reaffirms that the Government is opposed to the amendment. It is reasonable to comment that from time to time deep conversation with advisers occurs on the Government side and that this has resulted in a slight change of attitude. Therefore, I do not feel the least embarrassed about waiting for further deliberations to come through. Unless there is further comment, I indicate that the Democrats will oppose the amendment.

Amendment negatived; clause passed.

Clauses 19 to 21 passed.

Clause 22—'Restriction on payment by strata corporation to its members.'

The Hon. C.J. SUMNER:

Page 13, after line 40—Insert new subclause as follows:

(2) Subsection (1) does not prevent—

(a) reasonable payments to a member for services provided to the strata corporation by that member;

(b) the reimbursement of costs or expenses incurred by a member on behalf of the strata corporation.

This new subclause authorises payment by a strata corporation to a member of the corporation for services provided to the corporation and the reimbursement of costs and expenses incurred by a member on behalf of the corporation.

The Hon. K.T. GRIFFIN: I support the amendment, which is identical to one that I have on file. I think it overcomes one of the major difficulties that was drawn to my attention where on occasions members of the strata

corporation wanted to do things like mowing the lawn or a bit of maintenance work for a modest fee (which would be to the benefit of all strata holders) yet were prevented from doing so under the Bill.

Amendment carried; clause as amended passed.

Clauses 23 to 29 passed.

Clause 30—'Duty to insure.'

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

Page 17, lines 13 to 16—Leave out subclause (3) and insert new subclause as follows:

(3) The insurance must be against—

(a) risks of damage caused by events declared to be prescribed events in relation to home building insurance under Part V of the Insurance Contracts Act 1984 of the Commonwealth;

and

(b) risks against which insurance is required by the regulations.

This amendment arises from a representation made by the Insurance Council of Australia Limited. It sent me a copy of a letter dated 12 February 1988 addressed to the Minister for Environment and Planning and drawing attention to the problem with insurance. The Bill provides that a strata corporation must keep all buildings and building improvements on the site insured to their replacement value. Subclause (3) provides:

The insurance must be against all risks of damage except damage caused by—

(a) foreign military incursions;

(b) flood or erosion;

(c) a cause declared by the regulations to be one to which this paragraph applies.

The Insurance Council of Australia states:

'All risks of damage' is an unrealistic phrase. It can be taken to encompass the most remote of causes such as termite damage, loose tiles to a swimming pool, broken components in lift machinery, etc. I cannot see any insurer granting this open-ended cover. I suggest substitution of a reference to the Federal insurance contracts legislation, *viz.*, insurance cover shall be in terms of the standard cover set for home building insurance—Insurance Contracts Act 1984—or where relating to commercial occupancy a policy of insurance incorporating the prescribed events of the aforementioned policy.

(b) The word 'replacement' is not defined as having a special meaning given to it in the insurance term 'reinstatement and replacement' where it means 'new for old'. Any restricted interpretation of the word replacement (to mean replacement 'as is' or full indemnity only) would seem to prevent the strata corporation from arranging cover on a broader reinstatement and replacement basis. Obviously such a restriction is not in the interests of the unit holders.

If the intention is to offer reinstatement conditions then I recommend that the cover include the extension of 'extra cost of reinstatement' which provides for construction necessarily incurred to comply with the requirements of any Act of Parliament or regulation made thereunder or any by-law or regulation of any municipal or other statutory authority.

(c) There is no provision for insuring contents of the strata corporation being common property—poolside furniture and maintenance equipment, furnishing to entrance halls, etc.

The amendment covers the difficulties referred to by the Insurance Council of Australia Limited and means that the insurance cover is more realistic.

The Hon. C.J. SUMNER: It is acceptable.

Amendment carried; clause as amended passed.

Clauses 31 to 34 passed.

Clause 35—'Management committee.'

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

Page 19, after line 30—Insert new subclause as follows:

(10) A strata corporation may, by unanimous resolution, appoint or engage a person to assist its management committee in the performance of the committee's functions.

In the second reading debate I made the point that it appeared that there was really no authority to delegate any of the responsibilities of management to a person or body that had specialist expertise. My amendment seeks to allow this. It means that there is no avenue for abuse. If all agree to appoint, say, a professional administrator to assist, they can do so.

The Hon. C.J. SUMNER: The Government opposes the amendment. There is nothing in the Bill that prevents the corporation or management committee from employing an agent to assist in the management and administration of the corporation. Therefore, the amendment is unnecessary. It also has the added problem that it would require a unanimous resolution in order to appoint a person to assist the management committee. That seems to be not an appropriate case for a unanimous resolution.

The Hon. K.T. Griffin: I am happy to delete 'by unanimous resolution'.

The Hon. C.J. SUMNER: The Government believes that it is not necessary. What the honourable member seeks to do can be done and I understand that it is done at present.

The Hon. K.T. GRIFFIN: I refer to clause 23 which deals with officers of the strata corporation, and subclause (6). My amendment seeks to take that a step further but to reflect those provisions. I see nothing wrong with an accountant or strata administrator being engaged to assist a strata corporation. I merely included 'unanimous resolution' because I thought that that was more likely to be acceptable to the Government, I am perfectly happy to remove reference to 'unanimous resolution' and thereby ensure that there is no doubt that the strata corporation can appoint or engage a person to assist the management committee in the performance of the committee's functions. The words 'unanimous resolution' ensure that everyone is on side, although they have the disadvantage that some may decide to be difficult and not agree, which then frustrates the majority. I merely want to ensure that there is no doubt about the corporation's authority to engage assistance and pay for it.

The Hon. I. GILFILLAN: The phrase 'by unanimous resolution' appears in clause 23 (6) and in this amendment. It is awkward and imposes possibly unrealistic requirements on any group of human beings living in these circumstances, with the possible exception of Quakers or Buddhists who seem to get on a lot better than the rest of us.

The Hon. K.T. GRIFFIN: If the problem is the words 'by unanimous resolution', I would be happy in both of those provisions to put in a specific provision allowing it, but delete the reference to 'by unanimous resolution'. That will overcome all the problems. If the Attorney-General is happy to accept that, I seek leave to amend my amendment by deleting the words 'by unanimous resolution'.

Leave granted; amendment amended.

The Hon. K.T. GRIFFIN: It will now read:

A strata corporation may appoint or engage a person to assist its management committee in the performance of the committee's functions.

The Hon. C.J. SUMNER: I do not strenuously oppose it, but it is not necessary.

Amendment carried; clause as amended passed.

Clauses 36 to 40 passed.

Clause 41—'Information to be furnished.'

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

Page 22, after line 12—Insert the following:

Penalty: $500.

This provides for a penalty where a strata corporation has not provided information as required under the provision.

The Hon. K.T. GRIFFIN: I am not averse to the amendment. I can see the need for some sanction, but the point I raised during my second reading speech with respect to penalty applies equally or probably more so here. If a corporation does not provide this information to a unit holder, it commits an offence, it goes to court, it is fined and—lo and behold—if the penalty is $200, all the unit holders will

be required to contribute, in effect, because it must come out of the strata corporation's funds and the only funds it gets are from those unit holders in proportion to their unit entitlement. This is a ludicrous position in which a person who cannot get satisfaction ends up paying part of the penalty. I ask the Attorney-General to give some consideration to how that is to be resolved. I thought that it might be better to provide for the court to make an order requiring the production of these papers if the strata corporation will not provide them. All you want is results.

The Hon. C.J. Sumner: That costs more.

The Hon. K.T. GRIFFIN: But the alternative is that, in the penalty provision, you provide for the court, in imposing penalty, also to make an order for the production of the documents. The offence provision will not provide the documents, because they may say, 'We are still not going to do it.' How will you cope with that? I think that there is a problem. The penal sanction can be left, but more as a deterrent than anything else. I think that there must be a positive provision that allows the court to make an order that this material be produced.

The Hon. C.J. SUMNER: The problem that the honourable member has is that, if the penalty clause is left out, the only way that the matter can be dealt with is by going to the Supreme Court under general law, and that would probably be more expensive than dealing with the matter summarily. I think the protection in the penalty clause is the fact that the Attorney-General must authorise any prosecution under the legislation and that it is dealt with summarily. The penalty then applies and maybe you will get what the honourable member considers to be the anomalous situation of a person who subsequently becomes a unit holder contributing to the fine that is imposed on the corporation. The alternative is that, if you leave out the penalty, the aggrieved person must find an alternative means of resolving the dispute, that is, to get the information required under the Act disclosed.

The only procedure is to apply under the general law to the Supreme Court and that would be significantly more expensive for the individuals and possibly the corporation later depending on which way the case fell and what costs were awarded than the procedure we are currently attempting to insert, which is a penalty—albeit not a great one—which should be sufficient to ensure that the law is complied with. I guess that the safeguard is that the Attorney-General must consent to the prosecution.

The Hon. K.T. GRIFFIN: Even if prosecuted and convicted there is no provision to require the corporation to produce the goods. Perhaps the option is to specifically provide a mechanism by which an application can be made to the Supreme Court so that one is not relying on the general law, but has a specific mechanism to enable it to be done in the hope that it can be dealt with in chambers—and fairly promptly.

The Hon. I. Gilfillan interjecting:

The Hon. K.T. GRIFFIN: As I said, the problem is that you get into the position where the member of a strata corporation who is seeking the information ends up contributing to the penalty.

The Hon. I. Gilfillan interjecting:

The Hon. K.T. GRIFFIN: The corporation could keep on being fined every month but still not be compelled to produce. It is not a big issue, but nevertheless it raises an important issue, and my preference would be to provide some sort of mechanism for a civil action which would require the provision of the material and the capacity for the court to make orders for costs against those members of the corporation who are responsible for the failure to perform. That might be a satisfactory way of doing it and an adequate deterrent in itself. That is a better course to follow than the introduction of a penal provision.

The Hon. C.J. SUMNER: My proposition is that we include in clause 49 a provision that, where a prosecution is taken, the court may order that the information be provided. We will then proceed by including this vicious penalty in clause 41.

Amendment carried; clause as amended passed.

Clauses 42 to 45 passed.

Clause 45a—'Relief where unanimous resolution required.'

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

Page 24, after line 13—Insert new clause as follows:

45a. (1) Where a unanimous resolution is necessary under this Act before an act may be done and that resolution is not obtained but the resolution is supported to the extent necessary for a special resolution, a person included in the majority in favour of the resolution may apply to the Court to have the resolution declared sufficient to authorise the particular act proposed and, if the Court so orders, the resolution will be taken to have been passed as a unanimous resolution.

(2) Notice of an application under subsection (1) must be served on—

(a) every person who was entitled to exercise the power of voting conferred under this Act and did not, either in person or by proxy, vote in favour of the resolution; and

(b) any other person whom the Court declares to have a sufficient interest in the proceedings to require that the person should be served with notice of the application,

and the Court may direct that any person served with, or to be served with, notice of proceedings under this subsection be joined as a party to the proceedings.

(3) The Court should not order a party who opposes an application under this section to pay the costs of a successful applicant unless the Court considers the actions of that party in relation to the application were unreasonable.

This clause provides some relief against the need to obtain a unanimous resolution. It can be that the wishes of the strata corporation can be thwarted because a few members of the corporation unreasonably withhold their consent to a course of action agreed to by the other members. This provision will allow the majority, provided they would have the numbers for a special resolution, to approach the court to have the resolution declared sufficient.

The Hon. K.T. GRIFFIN: I support the new clause. It is a useful provision and will overcome some of the problems which have been raised with me and with some of my colleagues about the stubbornness of one or two members of a strata corporation who will not agree to anything at any price. This helps to overcome that difficulty in circumstances which should ensure that equity is done.

New clause inserted.

Clauses 46 to 50 passed.

Schedule 1.

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

Page 26—After the item: 'Section 223 *lb* (4) *(a)* (ii) . . . ' insert:

Section 223 *lo* (4) Strike out 'except as provided by subsection (5); and insert: 'except—

(a) as provided by subsection (5);

or

(b) in accordance with the Strata Titles Act 1988'.

The Bill provides that where a proposed strata unit would encroach upon an existing easement the easement will be extinguished as regards the proportion encroached upon at the time of deposit of the strata plan in the Lands Titles Office. Difficulties have been experienced under a similar provision in the current legislation where a proposed unit encroaches upon an easement pursuant to section 223 *lo* of the Real Property Act, as that section provides that an easement created pursuant to it can only be extinguished

by the execution of an instrument prescribed for the purpose.

This means that a strata developer in this instance cannot use the provision of this Bill and extinguish the easement upon deposit of a plan. It must use the provisions of section 223 *lo* and execute the additional instrument. This not only is an inconvenience and an extra cost to the developer but also requires the Lands Titles Office to make unwieldy endorsements to the relevant certificates of title and other records. The proposed amendment to section 223 *lo* will provide the means by which the developer can by-pass the present requirements of section 223 *lo* and use the provisions of this Bill.

The Hon. K.T. GRIFFIN: I am happy to support the amendment.

Amendment carried; schedule as amended passed.

Schedule 2.

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

Page 27, clause 5 (4) *(c)*—Leave out 'the certificate of title' and insert 'the certificate'.

This is a drafting amendment.

The Hon. C.J. SUMNER: We agree with it.

Amendment carried; schedule as amended passed.

Schedule 3.

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

Page 28, clause 10—Leave out 'A person bound by these articles' and insert 'The occupier of a unit used for residential purposes'.

This amendment confines the prohibition on the use or storage of explosive or other dangerous substances to residential premises.

The Hon. K.T. GRIFFIN: I support the amendment.

Amendment carried; schedule as amended passed.

Title passed.

Clause 23—'Officers of strata corporation'—reconsidered.

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

Page 14, line 16—Delete 'by unanimous resolution'.

The Hon. K.T. GRIFFIN: I support the amendment.

Amendment carried; clause as amended passed.

Clause 34—'Voting rights at general meetings'—reconsidered.

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

Page 19, after line 6—Insert new subclause as follows:

(8) For the purposes of this section, a reference to commercial or business premises extends to any premises other than premises used for residential purposes.'

My point during the second reading debate was that there did not appear to be any definition of commercial or business premises for the purposes of clause 34 (2). My amendment is consistent with what the Attorney-General responded during the course of his reply. It is designed to try to get some description of commercial or business premises into the Act. It was done by exclusion rather than inclusion. It will help those who have to read the legislation and interpret it.

The Hon. C.J. SUMNER: It is not opposed.

Amendment carried; clause as amended passed.

Clause 49—'Proceedings for offences'—reconsidered.

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

Page 25, after subclause (3)—Insert subclauses as follow:

(4) Where a person fails to comply with an obligation imposed by this Act and is, in consequence of that non-compliance, convicted of an offence against this Act, the court may order the convicted person to comply with the obligation within a time fixed by the court.

(5) If the convicted person fails to comply with an order under subsection (4), that person is guilty of a further offence. Penalty $2 000.

The amendment will provide that where a prosecution is instituted for contravention of the Act, and that involves a prosecution for failure to comply with an obligation, in the event of the person or the corporation being convicted of an offence for such non-compliance, the court can order the convicted person to comply with the obligation. That overcomes the problem that the Hon. Mr Griffin outlined in the debate on clause 41 when we inserted a penalty for non-disclosure of information.

The Hon. K.T. GRIFFIN: I am happy to go along with it. It does accommodate the point of view I raised earlier. It still does not deal with the problem of the innocent members of the corporation having to bear, or share in, the cost of a fine, but I cannot see any other option at the moment, and I am happy to go along with this.

Amendment carried; clause as amended passed.

Bill read a third time and passed.

SUPERANNUATION BILL

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

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation of the Bill inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

Superannuation in the public sector in this State has, as honourable members of the House will know, undergone considerable investigation and review over the last two years. In 1985 the Government set up a committee of enquiry into public sector superannuation, chaired by Mr Peter Agars of Touche Ross and Co. The committee consisted of members from the unions and the private sector, as well as representatives from Government. The committee reported to the Government in April 1986 with a lengthy and complex report containing 74 recommendations. The scheme on which the Agars committee concentrated was the South Australian Superannuation Fund which covers public servants and employees of many public authorities.

A majority of the committee expressed concern that whilst the State scheme only attracted 30 per cent of eligible employees as members, it was amongst the most generous public sector schemes in Australia. Whilst it was originally envisaged that the fund would meet 28 per cent of the total cost of benefits, the Agars committee reported that the fund was currently only able to support 17.5 per cent of the cost of benefits. The Government was therefore having to support 82.5 per cent of the cost of total benefits. A significant factor contributing to the fund's inability to meet 28 per cent of the cost of all benefits was the exceedingly generous concessions given to members who joined the scheme before 1974. The Agars report states that the value of the concessions granted to members of the fund in 1974 was $146 million (in 1974 terms). The State scheme has therefore been very generous to a relatively small proportion of Government employees.

Against this background of an expensive scheme which benefited so few employees, the government decided in May 1986 that action was needed to reduce the average superannuation costs per member and produce a scheme better adapted to the needs of potential members. Accordingly, the Premier announced on 30 May 1986 that the existing South Australian Superannuation Fund would be closed to

new entrants. At the same time it was announced that a task force would be set up to look at the Agars recommendation and report to the Government on a suitable new scheme. The task force has an ongoing role in advising the Government on the future of all public sector schemes.

The task force has reported to the Government on a new scheme for public servants which has a significantly lower cost per member to Government. The new scheme proposed by the Superannuation Act Bill 1988 has an employer cost of 12 per cent of a member's salary compared to the 17 per cent of salary average new entrant employer cost under the existing scheme. This cost is in line with the new schemes being introduced by State Governments elsewhere in Australia. Furthermore, the cost of the new scheme is in line with the private sector schemes of the larger organisations.

One of the problems of the existing State scheme was that it failed to meet the differing needs of employees. The new scheme addresses these differing needs and at a lower cost per member to the Government. It is a responsible step for government because of the significantly lower cost per member, and significant for employees because it introduces a scheme which is more equitable and better tailored to their differing circumstances.

The Government is committed to reducing the long term costs of the existing scheme. This will be achieved by increasing the per centage of a pension that may be converted to a lump sum. It is cheaper in the long term for the Government to pay lump sums than fully indexed contributor pensions, spouse pensions and childrens pensions. However, because the existing scheme is a pension scheme and existing contributors have joined the scheme with an expectation of receiving an indexed pension in retirement, the Government will ensure that existing retirement entitlements will be maintained. In general, no new benefits are to be introduced into the existing scheme except for a preservation of benefits until retirement age option, the cost of which is being met as part of the '3 per cent productivity benefit' agreed to under the national wage case guidelines. In future however, existing scheme members who resign early and do not choose to preserve a benefit for retirement, will receive interest at the fund earning rate on their own contributions on leaving the scheme.

The Bill before the House represents the result of lengthy investigations, research, planning and consultation. The United Trades and Labor Council and the Superannuation Federation which represents contributors and pensioners, both support the proposed new scheme and the proposed changes to the existing scheme.

The new scheme is a lump sum scheme with a split employee and employer benefit. An employee who joins the scheme will be able to contribute on a flexible basis at a chosen contribution rate between 1.5 per cent and 9 per cent of salary and on retirement receive his or her contributions accumulated with interest. Benefits are based on a contributor averaging 6 per cent of salary. Interest will be paid at the earning rate of the fund. In addition to the employee component, an employer benefit will be paid to the contributor. The maximum employer component will be 4.5 times salary based on a membership period of 35 years. The expected total of the employee and employee benefit payable at age 60 after 35 years membership is 7 times salary. Proportional benefits will be payable for shorter periods of membership. Members will be able to retire early after the age of 55 years. This is consistent with the existing scheme. The expected maximum benefit at 55 is 6 times salary. Maximum employer benefits will be based on a member paying the standard contribution of 6 per cent of salary for 35 years.

The scheme will provide a lump sum benefit to members who are retired due to invalidity. As all exits from the scheme over the age of 55 will be classed as retirements, the maximum invalidity benefit will be based on the age 55 early retirement benefit—that is a total benefit estimated to be 6 times salary consisting of an employer benefit of 3.86 times salary. In order to enable proper assessment of potential invalidity retirements, a temporary disability allowance will be payable to a member who is unable to perform his or her duties or other suitable employment. The temporary disability allowance, at the rate of two-thirds of salary will be payable for an initial period of up to 12 months. Government costs will be kept to a minimum through a proper assessment of an employee for total invalidity retirement. Under the new scheme no employee will be able to be retired on invalidity by an employer unless the superannuation board agrees to retirement. The emphasis under the new scheme will be on rehabilitation and retraining as much as possible.

The scheme will provide lump sum benefits to a spouse and allowance to dependent children on the death of a contributor. A maximum employer benefit payable to a spouse will be 3 times salary. In addition, there will be a refund of employee contributions accumulated with interest. Children's benefits are to be paid as allowances because the Government believes this to be the most appropriate form of benefit for children.

Under the new scheme the estate of single contributors will receive s as a consequence of death before retirement, a share of employer benefits. Vesting of employer benefits will be available to the estate of single people on their death, with the longer serving members members receiving the greater percentage of the accrued employer benefits. The new scheme will continue to provide a benefit to a member who is retrenched. However, benefits will be based on actual service provided to the employer. Retrenchment benefits will not be based on prospective service as under the existing scheme.

A significant feature of the new scheme is that members who resign from Government employment before attaining the age of 55 years will be able to preserve their benefits either within the scheme or by transferring them to certain approved schemes. This option will encourage greater mobility of the Government workforce. It will also encourage greater participation in the scheme by female workers. In the past, female workers have been seriously disadvantaged by losing all their accrued superannuation benefits on leaving the workforce for family reasons. This will be a thing of the past. The new scheme allows all workers who join the scheme to leave their money in the scheme until genuine retirement after 55 years of age, and receive an employer benefit based on actual membership. As I have already stated, a preservation of benefits option is being introduced into the existing scheme as well.

The Government firmly believes that an employee or spouse who receives benefits under WorkCover should not, in addition receive superannuation benefits to compensate for loss of future earnings. The new scheme has been designed so that the superannuation benefit structure dovetails the new WorkCover benefits. Notwithstanding this principle, where a contributor is still an employee but in receipt of workers compensation, the employee will still be considered to be an active member of the superannuation scheme. The restriction to prevent the 'double-dipping' of employer benefits will occur on the death or invalidity retirement of the worker. In such situations though, the value of the accrued benefits to the date of invalidity or death will always be paid.

The Government proposes in the Superannuation Act Bill to introduce several changes to the existing scheme. In principle though, no new benefits are to be introduced that have a significant cost impact on the Government. It is proposed to introduce a new flexible contribution rate system as under the new scheme. Members will be able to choose a level of contribution rate between 1.5 per cent and 9 per cent. In special circumstances a contributor will be permitted to reduce the contribution rate to 0 per cent. A period of zero contributions, except for approved periods of leave, will however be deemed to be a period of non-membership. This arrangement will introduce flexibility into the existing scheme. It may also have a tendency to reduce the Government's liability if significant numbers of members choose a lower level of contribution than the standard rate for maximum benefits. Until now members had no option but to maintain their existing contribution levels even in a period of financial difficulty. Flexible contribition rates provide more flexibile superannuation planning. Honourable members of the House will recall one of the reasons that lead to the superannuation enquiry. It was the Actuary's recommendation that member contribution rates in the existing scheme be substantially increased. The Government has decided that because of the closure of the scheme to new entrants and moves to reduce the long term costs of the scheme, member contribution rates will remain at the existing standard levels.

As is proposed under the new scheme, a disability allowance will also be provided to potential invalid retirees under the existing scheme before their actual retirement. The aim once again is to control Government costs and rehabilitate or retrain where possible rather than automatically retire an employee on an indexed pension payable for life. Superannuation benefits under the existing scheme will also be dovetailed into the WorkCover benefits so that 'double-dipping' in employer benefits does not occur.

The most significant change to the existing scheme will provide an option for pensioners to commute greater portions of their pension to a lump sum. In general, new pensioners will be able to commute up to 50 per cent of their pension to a lump sum. Where the level of pension is below $8 000 per annum it is proposed to allow the whole pension to be converted to a lump sum. In addition, all existing pensioners on pensions less than $12 000 per annum will be given an option to commute further pension to a lump sum. It is proposed to make this offer to existing pensioners later this year. Where pensioners do not wish to convert pension to a lump sum, the existing benefits will be maintained. Considerable long term savings will accrue to the Government if this option of greater commutation is picked up by existing pensioners.

The AGARS committee strongly recommended increased commutation as a means of the Government reducing the existing scheme costs. The net savings to the Government come from the offering commutation at rates attractive to individuals and attractive to the Government. I emphasise though, that existing pensioners, including the many senior citizens under the scheme, will not be forced to take a lump sum. If any person wishes their pension to continue on the existing basis, a pensioner may simply ignore the offer that the superannuation board will put before them.

The Bill also introduces new structures for the superannuation board and the superannuation fund investment trust. In the future, both of these bodies will be chaired by persons independent of Government. The Government has also agreed with the AGARS committee recommendation that neither the public actuary nor the deputy public actuary shall be a member of these bodies. The role of the public actuary will be one of an independent adviser to the superannuation board and the investment trust. The trust will in future consist of five members, of whom two will be appointed by the Governor. Both, the United Trades and Labor Council and the superannuation federation will nominate a member for the Trust. The Board already has a similar 5 member structure. The structure of these bodies is in accordance with the Federal Government guidelines on superannuation trustee bodies.

The Bill before the house will establish a superannuation scheme for Government employees that is comparable with standards set in the private-sector and which is cost effective and equitable. I accordingly commend the Bill to the House.

Clauses 1 and 2 are formal.

Clause 3 repeals the 1974 Act.

Clause 4 provides for interpretation of the Bill. The definition of 'adjusted salary' accommodates the problem of the amount of salary to be used when calculating benefits payable to a part-time or casual employee. Subclause (3) *(b)* provides that the actual or attributed salary of a person employed on a part-time or casual basis will be taken to be the salary that the contributor would have received if working full-time.

Clauses 6 to 10 provide for the continuation of the South Australian Superannuation Board.

Clauses 11 to 16 provide for the continuation of the South Australian Superannuation Fund Investment Trust.

Clauses 17 to 20 provide for the continuation of the South Australian Superannuation Fund.

Clause 21 provides for reports to be made by the Board and the Trust to the Minister.

Clause 22 provides for entry of new contributors.

Clause 23 provides for variable contribution rates and also for the salary on which contributions are based.

Clause 24 deals with contribution points. A contributor contributing at the standard rate of 6 per cent of salary accrues one point per month. The rate of accrual varies proportionately with the rate of contribution so that a contributor contributing at 9 per cent of salary will accrue points at 1.5 per month. However subclause (5) provides that when calculating accrued points for benefit purposes the accrued points cannot exceed the number of months in the contributors period of contribution to the Fund. Therefore the only reason to contribute at a rate above 6 per cent is to compensate for a period of reduced contribution or to build up the contributor's interest in the Fund.

Clause 25 is included to enable the Government, when negotiating with a person whom the Government particularly wants in the Public Service, to offer attractive terms as to superannuation. Such persons are usually people in mid life who have already proved themselves but who, because of their age, would otherwise only obtain marginal benefits from the scheme.

Clause 26 is self explanatory.

Clause 27 sets out benefits under the new scheme on retirement.

Clause 28 provides for benefits on resignation. The clause allows a contributor to preserve his benefits or to carry them over to a new fund.

Clause 29 provides for benefits or preservation on retrenchment.

Clause 30 provides for a disability pension under the new scheme. The pension can be paid for a period not exceeding 12 months (except in special circumstances) and is designed to allow a period for assessment before a contributor is paid benefits on invalidity.

Clause 31 provides for benefits on invalidity.

Clause 32 provides for benefits on death.

Clause 33 is self explanatory.

Clause 34 provides for a pension payable on retirement under the existing scheme.

Clause 35 provides for a pension payable on retrenchment.

Clause 36 provides for a disability pension in the existing scheme.

Clause 37 provides for an invalidity pension.

Clause 38 provides for a pension payable on the death of a contributor.

Clause 39 provides for resignation and preservation of benefits under the existing scheme.

Clause 40 provides for commutation of pensions based on commutation factors prescribed by regulation.

Clause 41 allows for medical examination of invalid pensioners at the instigation and expense of the Board.

Clause 42 enables the Minister to require an invalid or retrenchment pensioner to accept appropriate employment. If the employment is not accepted the pension can be suspended. If it is accepted the pensioner gets full credit in terms of contribution points for the period that he was not employed.

Clause 43 provides for the date of commencement of a pension.

Clause 44 provides for a review of the Board's decisions by the Supreme Court.

Clause 45 provides for the effect of workers compensation on pensions. A pension whether paid to a former contributor, his or her spouse or a child will be reduced by the amount of workers compensation. A pension paid to a former contributor will also be reduced by any wages or salary earnt by the pensioner. These provisions only apply to a pensioner who is below the age of retirement.

Clause 46 provides that benefits payable to a spouse under the Act must, if the deceased contributor is survived by a lawful and a putative spouse, be divided equally between both spouses.

Clause 47 provides for the indexing of pensions.

Clause 48 provides for the application of money standing to the credit of a contributor's account after all benefits have been paid under the Act.

Clause 49 provides for the payment of money under the Act where the person entitled is a child or is dead.

Clause 50 prevents assignment of pensions.

Clause 51 enables a liability of a contributor under the Act to be set off against a benefit payable to the contributor under the Act.

Clause 52 enables the Board to provide annuities.

Clause 53 provides for continuation of the Voluntary Savings Account.

Clause 54 gives the Board access to information.

Clause 55 provides for confidentiality of information as to entitlements and benefits under the Bill.

Clause 56 recognizes the complexity of the subject matter of this Bill and gives the Board some latitude in applying its provisions to the varied circumstances that are likely to arise in its administration.

Clause 57 is a standard provision.

Clause 58 permits benefits to be paid in a foreign currency in certain circumstances.

Clause 59 provides for the making of regulations.

Schedule 1 sets out transitional provisions. Clause 1 provides for continuity of membership. Clause 2 provides for standard contribution rates for continuing contributors. Clause 3 provides for the opening of old scheme contributors contribution accounts. Clause 4 preserves a present advantage enjoyed by certain contributors who joined before the commencement of the present Act. Clause 5 provides for the number of points to be credited to old scheme contributors. Clause 6 sets out certain provisions relating to members of the Provident Account. Clause 7 provides for the continuation of limited benefits. Clause 8 preserves increases resulting from excess unit additions. Clause 9 preserves neglected unit and fund share reductions. Clause 10 provides for continuation of pensions. Clause 11 abolishes the Provident Account and the Retirement Benefit Account. Clause 12 ensures the continuation of arrangements made under section 11 of the existing Act. Clause 13 provides for continuity of the elected members of the Board. Clause 14 provides that any person who resigns from the old scheme on or after 1 January 1988, may preserve his benefits under the provisions of the Bill.

Schedule 2 gives the value of C for the purposes of clause 34 (2) of the Bill.

Schedule 3 gives the values of D, E, F and G for the purposes of clause 34 (3).

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

STATE LOTTERIES ACT AMENDMENT BILL

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

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

That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

The purpose of this Bill is to prohibit the operation of commercial syndicates for lotto games. The prospect of large profits from lotto games has led to the growth of commercial syndicates. For a fee and often a proportion of any winnings, these persons collect money from a number of subscribers for the purchase of large systems entries.

These syndicates are not always conducted with due business propriety and their practices may bring discredit upon the lotto competition. Therefore, they are potentially damaging to the good name of the Lotteries Commission and to the important contribution which the commission makes to the State budget. The proposed amendment would not interfere with social, workplace or family syndicates as these do not involve payment of a fee.

Clause 1 is formal.

Clause 2 amends section 19 (5) of the Act which makes it an offence to promote or take part in a syndicate for the purchase of a lottery ticket for fee or reward. The current provision exempts promoting or taking part in such a syndicate if the reward for doing so is a share in a prize won by the ticket. The amendment removes this exemption.

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

ABORIGINAL HERITAGE BILL

The House of Assembly intimated that it agreed to the Legislative Council's amendments.

ROAD TRAFFIC ACT AMENDMENT BILL (1988)

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

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

That this Bill be now read a second time.

I seek leave to have the detailed explanation of the Bill inserted in *Hansard* without my reading it.

Leave granted.

Explanation of Bill

The Federal Government established a national road freight industry inquiry to investigate all aspects of the industry. One of the outcomes of the inquiry has been a decision that the speed limit differential between cars and heavy vehicles should be reduced. Such a reduction is thought to be not only advantageous to the industry but desirable from a road safety point of view as it should reduce overtaking, a major cause of road crashes.

Following agreement in the Australian Transport Advisory Council (ATAC), the speed limit for heavy vehicles on the open road was increased from 80 km/h to 90 km/h from 1 January 1987, throughout Australia. At the December 1987 meeting of ATAC it was agreed to increase the speed limit of heavy vehicles to 100 km/h throughout Australia as from 1 July 1988. This latest agreement was reached after considering the results of a survey of truck crashes carried out by the Federal Office of Road Safety. The findings of that survey indicate that road safety was not adversely affected because of the earlier increase in the speed limit from 80 km/h to 90 km/h as it related to trucks.

The speed limit for omnibuses in South Australia is currently 90 km/h. The control gear and braking characteristics of long distance coaches are now such that their operation at 100 km/h is as safe as, or safer than, the operation of trucks at the same speed. Accordingly, it is considered that an increase in the speed limit for omnibuses to 100 km/h should also not adversely affect road safety.

Clause 1 is formal.

Clause 2 provides that the measure is to come into operation on 1 July 1988.

Clause 3 amends section 53 of the Road Traffic Act 1961, which fixes 90 km/h as the speed limit for vehicles the gross vehicle mass, or combination mass, of which exceeds four tonnes and for omnibuses and vehicles carrying more than eight persons. The clause amends the section to increase this limit to 100 km/h.

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

FRUSTRATED CONTRACTS BILL

Returned from the House of Assembly without amendment.

ACTS INTERPRETATION ACT AMENDMENT BILL

Returned from the House of Assembly without amendment.

ADJOURNMENT

At 11.27 p.m. the Council adjourned until Wednesday 2 March at 2.15 p.m.